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SENATE PRESS GALLERY

STANDING COMMITTEE ON CORRESPONDENCE

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In the Matter of the Appeal of :
WORLDNETDAILY, :
Applicant. :
- - - - - x

Room SC-4
The Capitol
Washington, D.C.
Monday, April 15, 2002

The hearing in the above-entitled matter was convened at
a.m., BILL ROBERTS presiding.

COMMITTEE MEMBERS PRESENT:

BILL ROBERTS, presiding

JIM KUHNHENN SCOTT SHEPARD

DONNA SMITH JACK TORRY

FRANK WIGGINS, Counsel

PRESENT FOR THE APPLICANT:

JOSEPH FARAH PAUL SPERRY

ELIZABETH FARAH

RICHARD ACKERMAN, Counsel

2003

P R O C E E D I N G S

MR. ROBERTS: Hi, I'm Bill Roberts. This is Jim Kuhnhen
of Knight-Ridder and Donna Smith with Reuters. Jim and Donna are,
along with me, senior members of the committee. We were on the
committee all last year. Scott Shepard of Cox Newspapers, the big
guy there, and Jack Torry with the Columbus Dispatch are the new
members.

MR. TORRY: Good morning.

MR. ROBERTS: Joe Keenan with the Senate Press Gallery
and Frank Wiggins, our attorney in this matter with Venable. We want
to welcome Mr. Farah. Thank you for coming to Washington.

MR. FARAH: My pleasure.

MR. ROBERTS: And you've got your attorney Rich Ackerman,
and Paul Sperry of course we know, and your wife Elizabeth Farah.
Thank you.

The purpose of this hearing is to give you guys a chance
to tell us why the decision that we made was the wrong decision. You
have the letter and whatever conversations you've had with Joe and
Frank up until now. So why don't we just get started, and the table
is yours.

MR. ACKERMAN: Perfect. First of all, thanks a lot for
hearing us out at all. I certainly appreciate that.

Just a couple of procedural items since we can have the
transcript. First of all, I do want to object as a procedural matter
to the failure of the committee to provide us with any notes that

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were made to the application, with the 20-some odd Freedom of
Information requests that we made the were not responded to at all.
It is our contention that that is necessary for due process, that we
have the documents necessary to be able to understand what the
reasoning of the committee was in denying the application in the
first place, and particularly when we asked for the application
itself and we were not even given that because on the bottom of the
application it shows the reason for denial, and we're certainly

9 entitled to see what the written reason was for denial, as opposed to
10 the letter that you all actually provided us with.

11 With those things said -- and I gave this a lot of
12 thought. Actually, I was up at about 4:00 o'clock this morning
13 thinking about what I was going to say to you guys, and with this
14 fine lady over here.

15 I cannot skip the fact that what we are really doing here
16 is we're defining the marketplace of ideas, that's what we're doing
17 today. And when you denied the application of WorldNetDaily in terms
18 of its press credentials you defined and narrowed the marketplace of
19 ideas. That's what you did, because WorldNetDaily does indeed
20 represent certain viewpoints. Two and a half million readers are the
21 viewpoints that are at stake here in what you're dealing with today
22 and what's at risk.

23 Now, I also certainly know that you are a gatekeeper in
24 terms of defining what ideas are actually going to come into the
25 marketplace of ideas that's defined by what the legislature does.

2005

1 Now, we also know from Supreme Court precedent that the marketplace
2 of ideas is best fostered by diversity, not limiting somebody simply
3 because you think that they're conservative, and the operative term
4 "think" because one of the running themes here is, in looking at the
5 documents that you relied on in denying the application, the term
6 "conservative" comes up an awful lot.

7 We want to believe that the committee did not deny the
8 application because it has a problem with Joe Farah, WorldNet,
9 somehow being conservative. To date the committee has demonstrated
10 that it feels that the marketplace of ideas is indeed well served by
11 admitting even the likes of news sources run by totalitarian
12 governments. We certainly know that the Beijing Daily's been
13 admitted, we know that Xinhua's been admitted, we know that the
14 Vietnam News Agency has been admitted. And yet WorldNet, simply
15 because they're associated with what might be best characterized as
16 American conservatism -- and not by their own doing; that's something
17 that the committee did on its own in looking at the documents that
18 were relied upon.

19 Now, we certainly know that one of the surest ways to
20 bring about intellectual atrophy is to limit the number of ideas and
21 the quality of ideas and the sources of ideas in the marketplace.
22 That's exactly what's happening here when you deny this application.

23 We certainly know that the best ideas, WorldNet compared
24 to Beijing Daily -- the public's entitled to comparison of ideas, and
25 when you denied the application of WorldNetDaily you denied the

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1 public and two and a half million dollars -- two and a half million
2 readers, the comparison that they're entitled to.

3 I mean, one of the things that certainly has shown up in
4 WorldNetDaily particularly in the last couple of months is a whole
5 lot of articles about what's going on in the Middle East. I
6 certainly think that the two and a half million readers are entitled
7 to know what the legislature is doing relative to the Palestinian-
8 Israeli conflict, and we certainly know that WorldNet is producing
9 original content on exactly the issues that are at the forefront of
10 today's topic.

11 As the committee knows, it relied on a total of 27 points
12 of interest, and what I'm referring to is Mr. Wiggins' provided us
13 with a letter showing 27 items that the committee had relied upon in
14 denying the application. By my count, at least 16 were content-based
15 items. For example, here's an article that was relied on in denying
16 the application called "Special Message From Larry Klayman."

17 Then there's another article in here, "Conservative
18 Foundations Fund Promotion of Foster Conspiracy," "Richard Mellon
19 Scaife Funds the New Right." One reference after another, 16 at
20 least, and then, depending on how you interpret the rest, perhaps as
21 many as 20 focusing on the idea that WorldNet is perceived as being
22 conservative.

23 As a constitutional matter, that's unacceptable. You
24 cannot engage in viewpoint-based discrimination in denying an
25 application or permit which allows somebody to participate in First

2007

1 Amendment activities. Access to news is as important as the news
2 itself. Access to news gives rise to the ability to talk about the
3 news, to be able to talk about comparisons between different ideas
4 about what the news is.

5 You certainly know as journalists that how one paper
6 reports is not necessarily how the next paper is going to report.
7 How the L.A. Times reports and how the Washington Times reports are
8 not necessarily going to be the same thing. You can sit there and
9 you can compare them and you can say: Wait a minute; are we talking
10 about the same story? But that's what the marketplace of ideas is
11 about. That's why this application is so important and why my
12 clients care so much about it, why I came from California to argue
13 this, why Joe has taken time to be here, because it does, it goes to
14 the very core of what we're talking about in terms of the marketplace
15 of ideas.

16 Recently the Supreme Court in dealing with a conceptually
17 analogous situation, equal access in the Good News case, said that
18 when a governmental entity -- and I would claim that the Standing
19 Committee is sitting in the capacity of a governmental entity right
20 now. You have been assigned the duty of making sure that only
21 qualified reporters come in. You're performing a very essential
22 function, but you're also state actors.

23 That's part of the reason I'm concerned about your
24 failure to respond to our request for information, because if you're
25 a governmental actor then certainly open government applies to you

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1 just as much as it might to any other legislator in this building.

2 You certainly know as journalists that one of the things
3 that concerns you most is being able to get the information. But yet
4 in this situation that's exactly what you did, is you denied the
5 information when I asked for it, and I asked for it way ahead of time
6 of this hearing and it wasn't given to me.

7 Now, it strikes me as particularly odd that somebody like
8 the Beijing Daily can get access, where a closer connection to Mao
9 Tse Tung becomes a better credential for gaining access to this
10 building than being associated with American conservatism. And not
11 by your own doing, because my client is going to tell you flat out he
12 doesn't even want to be pigeonholed like that. That's something
13 you've chosen to do. Some might say that the WorldNetDaily is very
14 libertarian, which is completely different than whatever
15 "conservative" means and whatever these articles that you relied on
16 mean.

17 In justifying the denial, the committee focused on two
18 elements: the perceived connection to Western Journalism Center, a
19 nonprofit entity; and you focused, also focused on a perceived
20 failure to provide original and significant news content on a daily
21 basis. I looked at Rule 4.B. Nowhere in Rule 4.B does it say a
22 thing about nonprofit entities. What's odd about the Gallery's
23 reliance on Western Journalism Center is that as a nonprofit, as a
24 501[c][3], it cannot engage by its very definition and structure in
25 the things that you've accused it of implicitly.

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1 4.B says no lobbying. A 501[c][3] can't do that. So
2 you're saying, well, geez, you're connected with a nonprofit, but yet
3 a nonprofit by its very nature can't engage in the things that Rule
4 4.B says. There was nothing presented to us to suggest that you're
5 actually accusing them of lobbying or that you're actually accusing
6 them of promoting for money certain causes before Congress or its
7 members.

8 There's another interest at stake here when you rely on the
9 connection to the nonprofit Western Journalism Center -- freedom of
10 association. I can't imagine that if any of you had been denied your
11 credentials simply because you associated with somebody that you'd
12 feel that that was fair, because it's not. Who we associate with is
13 a protected right and you can't use that protected right as a basis
14 for denying a permit. The permit in this case goes to access to news
15 and information. You can't do that. It impinges on the First
16 Amendment.

17 We certainly know that the Christian Science Monitor, we
18 know that the Beijing Daily, we know that Al-Ahram, they're
19 controlled by outside entities. You didn't deny those credentials.
20 I mean, certainly Egypt has as much access to this room and more
21 access than these folks. That doesn't make sense.

22 If the concern of the committee is that there's a
23 connection to a nonprofit entity or that there's a connection to some
24 other entity that controls this particular media outlet, I would
25 suggest that some of your current members are far more controlled

2010

1 than WorldNet could ever even hope to be and wouldn't want to be.

2 As to the issue of original news content, the committee
3 has relied on the idea that there's not significant original content
4 being published on a daily basis. If what the committee means by
5 "significant" is, well, I know it when I see it, much in the same way
6 that it was pronounced for obscenity in the Miller test, that's not
7 what this committee should be about in terms of denying or granting
8 an application. "I know it when I see it" doesn't count when you're
9 at the core of the First Amendment. "I know it when I see it" is at
10 the outer limits of the First Amendment.

11 To compare WorldNet to something like obscenity or
12 pornography may be close to accurate, because we know that, if
13 anything, the committee thinks that they're too politicized, is
14 what's coming through in the documents that you relied on. You seem
15 to think that WorldNet's somehow politicized or controlled in some
16 way. And again, I'm just going off this. I'm not trying to mind-
17 read. I'm just going off the little bit of information that's been
18 provided to me. I don't want to mind-read. I'm hoping that the
19 committee was fair in its determination and that you'll be fair in
20 terms of evaluating the brief that I gave you and what I'm talking
21 about now. I trust that you will be, because I know that the First
22 Amendment is as important to you as it is to me and my client. I
23 know that, and I don't doubt your integrity in that regard.

24 In terms of significant original content, what's
25 significant is its importance to the First Amendment. Political

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1 speech, news, is at the very core of the First Amendment. When you
2 look at planetgov.com, that's essentially a governmental site.
3 There's a whole bunch of links to different governmental information,
4 but there is no original content, none. A whole bunch of links and
5 no original content. They're a member.

6 If you're looking at the dissemination of information on
7 a daily basis, news information, and that's how you get in -- and if

8 I've made a mistake, I certainly apologize.

9 MR. ROBERTS: We can come back to it.

10 MR. ACKERMAN: Or I think salon.com at one point in time
11 may have been credentialed -- another similar issue, again looking at
12 what do you mean by original content, what do you mean by significant
13 content. I think significant content is defined by the First
14 Amendment, because that's what we're talking about today. If it's
15 strongly connected to the First Amendment, then it should be
16 significant for your purposes. Original content, I covered that as
17 best I could in the brief, and if you have questions about that I'm
18 not going to get into that.

19 The committee raised a concern about WorldNetDaily's
20 advertisement or promotion of books, videos, and merchandise and
21 looked at that as a way to define the 1996 Internet policy. I would
22 certainly hope that the committee is not implicitly giving higher
23 value to some of the ads and promotions that you see in the standard
24 print media. I would certainly hope that the committee is not
25 somehow giving higher precedent to adult content type items that

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1 might be contained in your average newspaper, the personals that
2 often in a newspaper with all types of activities being promoted. I
3 certainly hope that you're not putting that on a higher
4 constitutional level than what's being promoted on WorldNet.

5 When you look at WorldNet, what's being promoted? Bill
6 O'Reilly's No Spin Zone. That sounds like political speech to me.
7 That gets the highest protection under the First Amendment, and I
8 would certainly hope that the committee does not have a problem with
9 the promotion of protected First Amendment speech, especially that
10 which sits at the very core of our protections.

11 As to my end, I certainly know that, win, lose, or draw,
12 I leave this hearing today knowing that I did everything that I could
13 to protect the First Amendment, access to news, equal protection, and
14 freedom of association. I know that when I walk away. If you choose
15 to affirm your denial of the application, I don't need to worry
16 because I know that I've done the right thing; and I would hope that
17 you would view the application of WorldNet in the same way, that you
18 would view it as something that is intimately connected to its two
19 and a half million readers, that WorldNet as a repository for ideas
20 is something valuable to two and a half million people.

21 If you choose to deny the application, you could say:
22 Well, what's the big deal? We just lost ideas. The marketplace of
23 ideas now has less than it did before.

24 I'd just like to reserve a couple minutes at the end if
25 there's any comments from Mr. Farah that I want to elaborate on.

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1 Thank you.

2 MR. FARAH: Thanks. I prepared a statement. In the time
3 restrictions that we have, I felt that was the best way to be sure
4 that I was able to cover all the points that I want to cover here
5 today. So if you'll indulge me, I will read this to you.

6 I have little hope today of persuading this committee to
7 reverse itself on its rejection of WorldNet Daily for accreditation
8 to the Senate Press Gallery. For 15 months my news organization, the
9 largest independent news site on the Internet, has patiently waited,
10 answered irrelevant and often insulting questions about our
11 ownership, our associations, our content, and received the run-around
12 as we have sought nothing more than to fulfil our obligation to our
13 2.5 million readers by covering the Congress on an even footing with
14 our competitors.

15 The ultimate insult from this committee came in the form
16 of a formal rejection of accreditation, a blatant denial of our First

17 Amendment rights by an arm of the U.S. Congress. It was a clearly
18 discriminatory decision and one not based on the rules governing the
19 Gallery, as Mr. Ackerman has already pointed out.

20 While I have little hope of disabusing you of the
21 prejudices and biases you have against me and my news organization, I
22 come here today to set the stage for a legal challenge and a public
23 relations offensive that will be successful. We will not give up.
24 We will not roll over. We will not let this issue rest.

25 Clearly, based on the committee's release of the
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1 documents it examined in rendering its decision, there is a political
2 bias at work. Clearly, the focus of a few unflattering articles,
3 many of which predate the very existence of my news organization,
4 demonstrate the predisposition of the committee against
5 WorldNetDaily. Clearly, many of the questions raised by Joe Keenan
6 over the last 15 months show the committee grasping at straws to find
7 a justification for denial even when none exists under the rules
8 governing the Gallery.

9 Double standards are being used to block WorldNetDaily's
10 access to the Capitol. While the committee finds WorldNetDaily
11 ineligible because of association with a nonprofit organization
12 solely devoted to promoting investigative reporting, it approves
13 other news organizations that are themselves nonprofits and others
14 controlled and owned by nonprofits with political and religious
15 agendas. It even approves foreign news organizations completely
16 under the control and domination of totalitarian governments.

17 While the committee finds WorldNetDaily ineligible
18 because of a lack of original content, it approves other news
19 organizations with far fewer resources and far less in the way of
20 track records of achievement in breaking nationally and
21 internationally significant news stories.

22 While the committee finds it objectionable that
23 WorldNetDaily runs clearly labeled advertisements for books, videos,
24 and other products and services with its news presentation, it
25 apparently has no problem with U.S. newspapers, which typically

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1 devote 80 percent of their space to showing goods and services to the
2 public.

3 Those are the objections cited in your rejection of our
4 application. None of them stand the smell test. None of them are
5 within the purview of this committee under the rules governing the
6 Gallery. All of them strongly suggest underlying motives, biases,
7 and prejudices.

8 Let's deal with some facts. WorldNetDaily's original
9 investigative reports have been picked up and credited by the
10 Associated Press, the Washington Post, the New York Times, the
11 Jerusalem Post, the London Times, the Wall Street Journal, the South
12 China Morning Post, United Press International, the Toronto Star, the
13 Los Angeles Times, the Chicago Sun Times, and dozens of other
14 responsible papers across the nation and around the world.

15 Indeed, WorldNetDaily has been cited by all of the news
16 organizations represented by this committee -- Reuters, Bloomberg,
17 Cox, Knight-Ridder, and even the Columbus Dispatch. I wasn't sure
18 about Bloomberg because it wasn't listed on Lexus-Nexus when I did
19 the search last night, but Paul Sperry informed me today that indeed
20 Bloomberg has picked up stories from WorldNetDaily.

21 We're doing the job. We're just doing it with a
22 handicap, as our access to the Capitol, to the White House, and to
23 the major political conventions has been severely restricted by the
24 actions of this committee and its staff. Somewhere, somehow, this

25 committee has concluded that WorldNetDaily is not a legitimate news
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1 agency. I can only guess, based on the improper and out of bounds
2 questions that staff has asked and on the information released by the
3 committee about its decision making process, that this conclusion is
4 based on political biases.

5 Indeed, WorldNetDaily marches to the beat of a very
6 different drummer. Our mission has always been to provide aggressive
7 watchdog-style coverage of government fraud, waste, abuse, and
8 corruption. This often makes government officials and bureaucrats
9 wary of us and it also makes our less aggressive colleagues nervous.
10 Some, because of their own biases, choose to stereotype WorldNetDaily
11 inaccurately as a conservative or libertarian news site. That I
12 believe is exactly what this committee is doing. It is uncomfortable
13 with our style of journalism, so it is making excuses to deny us
14 access to the Congress. That is unconstitutional and we will prove
15 it.

16 I dare suggest to you that I have more daily news
17 experience and accomplishments than anyone in this room. 20 years
18 ago when I was 27 years old, I was running a news room of some 200 in
19 a major market U.S. newspaper. A few years later I was serving as
20 editor in chief of a group of dailies and weeklies. A few years
21 later I was serving as editor in chief of the oldest daily west of
22 the Mississippi. I've been a reporter, I've been a city editor.
23 I've done everything there is to do in a daily news room, and that's
24 all I have done in my career. I have never crossed the line and
25 worked for political candidates or government. I don't even register
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1 to vote with a political party to avoid the appearance of conflicts
2 of interest.

3 Let me briefly talk about the man you denied
4 accreditation, Paul Sperry. Paul Sperry was not only accredited
5 previously, as Washington Bureau Chief of Investors Business Daily,
6 but while in that position he determined for the Gallery which other
7 IBD staffers would receive accreditation.

8 Sperry is a fearless and incorruptible investigative
9 reporter, for my money the best in this city. That's why we hired
10 him more than two years ago. But when he came to WorldNetDaily,
11 suddenly in the eyes of the Gallery he became a pariah.

12 What is this controversy all about? There have been
13 hints revealed in some of the questions raised by the committee. I
14 was asked about WorldNetDaily's connections with Judicial Watch, a
15 conservative nonprofit group. Judicial Watch has no connection with
16 WorldNetDaily.com. The group is a source of news to WorldNetDaily
17 just as it is a source of news to many other news organizations. The
18 chairman of the group sometimes writes opinion pieces published by
19 WorldNetDaily. But there is no connection.

20 Yet the question itself is revealing. Why would this be
21 a concern? Why would this be an issue? I believe the committee's
22 own political biases are affecting its judgment and its ability to
23 fulfil its responsibilities to the Congress and the press.

24 As further evidence of this point, I was asked about
25 WorldNetDaily's relationship with Richard Mellon Scaife, the man
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1 Hillary Clinton described as at "the epicenter of the vast right-wing
2 media conspiracy." Again, WorldNetDaily has no relationship with
3 Scaife, though he does reportedly invest in a competing news site and
4 owns his own newspaper. Yet why is this question even asked of us?
5 Because clearly the committee and-or staff has a political agenda of
6 its own and is imposing certain litmus tests on applicants.

7 The committee's fixation on Western Journalism Center is

8 another giveaway of this political bias. Though I founded WJC and
9 ran it for years as a tax-exempt 501[c][3] corporation specifically
10 restricted from lobbying, the committee has suggested in its
11 rejection of our application that the center is some kind of
12 political front group. It is nothing of the kind. It never has
13 been. It's a charity promoting independent investigative journalism.
14 Yes, it makes some politicians and government officials
15 nervous to have watchdogs looking over their shoulder. But that's
16 what the free press is all about, and that's the only agenda at work
17 in Western Journalism Center. Despite the contentions of this
18 committee, Western Journalism Center does not advocate anything
19 except good journalism.

20 There are, however, many accredited members of the
21 Gallery who advocate, lobby, even spy on the U.S. Congress. They are
22 the official organs of totalitarian states that have no concept of a
23 free press. This is what makes your decision about WorldNetDaily so
24 remarkable, so flabbergasting, so unjust, so duplicitous, so immoral,
25 and so unconscionable.

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1 After September 11th, most ordinary taxpaying Americans
2 are severely restricted from access to their own U.S. Capitol. But
3 you have bestowed upon these state-sponsored propagandists privileges
4 and access ordinary Americans will never know. You have given them
5 unfettered access to the U.S. government, while denying
6 WorldNetDaily.

7 With all of the new security procedures in place today at
8 the Capitol, unfettered access by the legitimate press is more
9 important than ever. The American people still have a right to know
10 what is happening in Washington and the press's role is more
11 important than ever. At the same time, it is my personal opinion as
12 an American taxpayer that spies and lobbyists representing foreign
13 dictators while masquerading as journalists do not belong in our
14 Capitol.

15 I look forward to addressing any and all of your
16 questions today. By the way, a week ago I moved my entire family to
17 Washington, D.C., metro area because this is where we intend to build
18 our editorial resources in the coming years. The actions of this
19 committee are adversely affecting my business and our ability to
20 compete. I not only expect to get this situation with Paul Sperry
21 resolved, I expect many more WorldNetDaily staffers to be accredited
22 in the years ahead, and without this kind of unacceptable and
23 unconstitutional hassle.

24 Thank you.

25 MR. ROBERTS: Mr. Sperry, do you have anything to say?

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1 MR. SPERRY: Yes, I just have some kind of housekeeping
2 items really. Bill, you mentioned that -- who are the two committee
3 members who were on the committee last year, Donna and Jim, was it?

4 MR. ROBERTS: It's Jim.

5 MR. SPERRY: I'd like to address this to the three of
6 you, then. You were here, of course. When did Mr. Keenan -- and my
7 original dealings were with Mr. Keenan. When did you three first --

8 MR. ROBERTS: Hang on a second. We're not going to get
9 into a Q and A like that. But if you've got a presentation to make,
10 we'll hear it.

11 MR. SPERRY: It's a simple question: When did you first
12 learn about WorldNetDaily's application?

13 MR. WIGGINS: The committee members really aren't here to
14 answer questions, and that's true for him, too. If there are some
15 informational things, Rich, that you feel important to you, you can

16 address those to me and we'll see whether there are ways to get
17 information to you. But it's just not going to work very well to try
18 to do it at this hearing. So comments are great; questions we're not
19 going to answer.

20 MR. SPERRY: Why is that? Is that a rule?

21 MR. ROBERTS: Let me just address that because we can
22 probably fix it real quick. I think I probably heard about it at the
23 first meeting when the application was offered. I couldn't tell you
24 whether that was January or February, but it should be in the record.

25 MR. SPERRY: January or February of 2002?

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1 MR. KUHNHENN: Not long after you sent it.

2 MR. SPERRY: Not long after I sent it?

3 MR. KUHNHENN: When did you send it?

4 MR. ROBERTS: It would have been 2001.

5 MR. SPERRY: So you did hear about it in 2001?

6 MR. KUHNHENN: Oh, yes.

7 MR. SPERRY: You didn't meet on it?

8 MR. ROBERTS: It was brought up at probably the first
9 meeting.

10 MR. KUHNHENN: The first meeting after you submitted it.

11 MR. SPERRY: Why did it take a year for you to make a
12 decision?

13 MR. ROBERTS: Well, I think now you're getting into an
14 argumentative kind of question, but why don't I put it back to you.
15 We at that first meeting said: We don't know who WorldNetDaily is;
16 let's take a look at it and in the mean time give them the privileges
17 of the Gallery, i.e., you Paul Sperry could come and get a sticker
18 and walk around just like any other reporter on Capitol Hill at any
19 time without any obstacle other than having to come to the Capitol,
20 which is presumably where you would be doing the reporting.

21 Our observation after six months was that you did it
22 once, and we're kind of curious why, if this was something so
23 important.

24 MR. SPERRY: When did you make that decision to allow me
25 fettered access with a day pass?

2022

1 MR. ROBERTS: I think that was at the first meeting.

2 MR. KEENAN: May 5th. [correct date is April 23, 2001]

3 MR. SPERRY: May what?

4 MR. KEENAN: May 5th.

5 MR. SPERRY: 2001?

6 MR. KEENAN: Yes.

7 MR. ACKERMAN: Just for the record, since we've got a
8 lull here in the commentary period, we did specifically request any
9 emails, any documents, anything that was relied on in items A through
10 D of our Freedom of Information request, and that was denied, saying
11 the Freedom of Information does not apply to the Press Galleries.

12 That's just for the record, so that we've got a clear record, Frank.

13 MR. WIGGINS: Sure. We'll put all these documents in the
14 record, I think maybe, Rich, is probably a good idea.

15 MR. ROBERTS: Let me bring this back to center here.

16 MR. ACKERMAN: Well, to get them to me today --

17 MR. WIGGINS: No, I mean afterwards.

18 MR. ACKERMAN: -- is a little unfair, I think.

19 MR. ROBERTS: What we thought we'd do is, having heard
20 the opening statement, is get into some questions from the committee
21 to you, so that we can try to understand the argument that you're
22 making to us and understand some more facts that apply to the
23 decision framework that we've used to deny your application.

24 Those are the two rules: one applying to Internet sites,

25 requiring substantial original reporting daily; and two, the
2023

1 longstanding precedent of the committee of denying applications from
2 media or publications that we perceive are affiliated with advocacy
3 groups. So I thought we'd start with Frank. Frank, if you've got
4 some questions.

5 MR. ACKERMAN: Just for the record, the 1996 Internet
6 policy upon which the committee relied is not something that can be
7 easily found by going to the Senate Press Gallery's web site. It's
8 not immediately available. I asked for it again as part of my
9 Freedom of Information request. I said I asked for any policies, any
10 standing orders, any guidelines, anything that you'd used in making
11 these determinations.

12 So just as a matter of due process objection, I think
13 it's incredibly unfair to say, well, we're going to rely on certain
14 interpretations that are not on the face of the actual rules and
15 regulations that the application itself refers to and that the Senate
16 Rules themselves refer to. You can't go outside the rules themselves
17 and say, well, there's some dicta out there that somehow covers what
18 we're doing, and yet not make it readily available.

19 One of our positions is that there's no way by looking at
20 the standards that you can know that the standard that you're now
21 trying to impose is anything that's even at issue. You pay your
22 eight bucks, you check off, make sure that you've complied with the
23 Senate Rules as they're stated, and that's what's obvious to somebody
24 coming to the Press Gallery for credentials.

25 Again, that's just for the record. It's a due process
2024

1 objection.

2 MR. WIGGINS: Before the committee members start asking
3 questions, could we supply the reporter with a copy of the material
4 that Mr. Farah read from? It just makes the reporter's job a little
5 bit easier to be sure that we get it right.

6 MR. FARAH: Sure. I deviated a little bit from the
7 original, but that's no problem.

8 MR. WIGGINS: Well, if you did then it's not going to be
9 helpful.

10 There have been different counts made of the extent of --
11 let me read it so I make sure I get it right -- "significant original
12 reporting content in the web site," and I thought that there may be
13 different counting standards being applied. Maybe we're counting
14 differently. What I'd like to do is give you -- I took a couple of
15 snapshots of the web site on Friday. I'd like to give these to you,
16 Rich, and have you indicate at your convenience -- I don't need it
17 right now, obviously -- which of these headlines you believe to be
18 associated with original reporting content, so we can at least kind
19 of --

20 MR. FARAH: A snapshot in time is totally meaningless on
21 a dynamic 24-7 web site like WorldNetDaily.

22 MR. WIGGINS: I'm not trying to use this as a measure of
23 amount.

24 MR. FARAH: Okay, but I'm trying to explain to you that
25 you can look at the site at any given moment --
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1 MR. SPERRY: We have two editions and we can post at any
2 time. So if it's a snapshot, it's not just in the week; it's in the
3 day you take the snapshot.

4 MR. WIGGINS: I understand all of that and I'm not trying
5 to make a measurement from this.

6 MR. FARAH: What are you trying to do?

7 MR. WIGGINS: All I'm trying to do is get an
8 understanding of what you define as original reporting content. So
9 you look at a headline and it'll say, "Count down to Israel's 'Doom
10 from Babylon,'" and you'll tell me, yes, I think that it is original.
11 MR. FARAH: It's quite clear if it's original it says
12 "WND."
13 MR. WIGGINS: Anything with a "WND" byline you count as
14 original?
15 MR. FARAH: Sure.
16 MR. WIGGINS: I don't think we need to take that any
17 further. That's it from me.
18 MR. ROBERTS: Okay. Jim, questions?
19 MR. ACKERMAN: And while we're not under oath and nobody
20 asked Mr. Farah to take an oath today, I can assure the committee
21 that all the representations that were made in the brief about the
22 14,000 stories and 7,000 of them being, quote unquote, "original
23 content" is a true fact and I'm certainly representing as somebody
24 who took an oath to uphold the Constitution as an officer of the
25 court that those statistics are in fact true and everything cited in
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1 the brief is true and correct to the best of my knowledge, and I'm
2 sure that Joe will tell you the same thing. So I think that that
3 should help in terms of original content analysis.
4 Well, geez, if we've got 7,000 articles, assuming that
5 that's uncontroverted, then you've got original content. The
6 issue is whether you deem that to be significant content being
7 disseminated on a, quote unquote, "daily basis," I think is where
8 we'd want to go with that.
9 But the committee makes its own determinations.
10 MR. KUHNHENN: A quick question, again to what Frank was
11 talking about, on page 6 of your brief and elsewhere as well you
12 mention the number 14,000 original news items. Later on you say that
13 about half of these are news stories and dating since October of '99.
14 Those would all carry the WND logo?
15 MR. FARAH: Yes.
16 MR. KUHNHENN: How frequently do they stay on the site?
17 MR. FARAH: Approximately 24 hours. They stay forever.
18 They're posted on page 1.
19 MR. KUHNHENN: I understand. When I called the site, about
20 24 hours, those are all reported stories? In other words, somebody
21 who has interviewed some people and then sat down and written a
22 story?
23 MR. FARAH: If it's a news story.
24 MR. KUHNHENN: Aside from commentary?
25 MR. FARAH: Yes. The 7,000 refers to news stories where
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1 there would be those kinds of standards and then there's
2 approximately another 7,000 which are original commentary.
3 MR. KUHNHENN: And all those are by your staff or are some
4 of them by freelance?
5 MR. FARAH: Some are by freelance, but mostly staff.
6 MR. KUHNHENN: Back to the question that Bill posed, Paul,
7 about not using the access, were you not aware that we had provided
8 that kind of access?
9 MR. SPERRY: You mean the day pass?
10 MR. KUHNHENN: Yes.
11 MR. SPERRY: Actually, fishing in my pocket of this
12 jacket, on one day at least I had come here -- here's your date
13 stamp. So any assertion that I did not take Mr. Keenan up on his
14 offer is erroneous. If you'd like this to look at it --
15 MR. KUHNHENN: No, no. We were aware that you used it.

16 MR. SPERRY: On more than one occasion.
17 MR. KUHNHENN: On more than one occasion?
18 MR. SPERRY: This is proof of at least one occasion, and
19 if you want more you can go to the Hart Building where they have the
20 financial disclosures for Senators. I've got logins in there. The
21 same with the Cannon Building for House members. There's
22 documentation.
23 MR. KUHNHENN: You don't need these things to get in there.
24 MR. SPERRY: You don't need that to get into the
25 building?
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1 MR. KUHNHENN: Not into Hart or Cannon.
2 MR. SPERRY: To get into the building, to get to those
3 centers?
4 MR. KUHNHENN: Right.
5 MR. SPERRY: Yes, you do.
6 MR. SHEPARD: How were you able to do that without a
7 pass?
8 MR. SPERRY: I did have a pass previously. You say May
9 5th is when you had a meeting and you decided to give me fettered
10 access. I still had my IBD, Investors Business Daily, hard pass,
11 which I was using. So I was going to hearings as well. I also went
12 to Pardongate hearings. That was 2001.
13 So anyone can document that that was in the hearings, the
14 press people.
15 MR. KUHNHENN: So wait a second. You were writing for
16 WorldNetDaily, but you were using your IBD pass?
17 MR. SPERRY: At that time it hadn't expired yet. That's
18 when I applied for the WorldNetDaily application, seeing that it was
19 going to expire.
20 MR. ACKERMAN: One of the things, again just for the
21 record, is I would hope that the committee's not intimating the idea
22 that the number of times somebody uses their press pass has anything
23 to do with qualification, because we certainly know that there are
24 members who are close to death, who are disabled, and everything
25 else, who aren't anywhere near to using their permanent credentials.
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1 MR. KUHNHENN: You're right, you're absolutely right.
2 MR. TORRY: He looks very healthy.
3 MR. ACKERMAN: No, no. Paul's very healthy. You can
4 tell.
5 MR. TORRY: Can I just follow up on that question,
6 because this to me is an important point. But can you estimate how
7 many times you've taken advantage of that pass?
8 MR. SPERRY: Which pass?
9 MR. TORRY: The visitor's pass, the access that the
10 committee had provided you.
11 MR. SPERRY: More than once. This is my proof of at
12 least once. Somebody made the assertion, I believe Mr. Kuhnhenh, that
13 I had never taken him up on the offer.
14 MR. TORRY: I know, but more than once, less than a
15 thousand? Can you give me --
16 MR. FARAH: What difference does it make? Why is it
17 important?
18 MR. TORRY: I'm not going to get into a debate with you.
19 I'm just trying to find a factual thing.
20 MR. FARAH: What difference does it make?
21 MR. SHEPARD: You said you were trying to fulfil your
22 obligation to your readers. We're just trying to determine to what
23 extent you were trying to fulfil --

24 MR. SPERRY: No, we want full access that you've afforded
25 Xinhua and other state-run organs. I had full access under Investors
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1 Business Daily. You credentialed me and a number of my reporters and
2 I'm going to change employers, somehow that all changed, and I'm
3 curious as to why.
4 MR. TORRY: Let me try it again. Can you guesstimate how
5 many times you took advantage of it?
6 MR. SPERRY: More than once.
7 MR. TORRY: More than once.
8 MR. ACKERMAN: The objection would be relevance, for the
9 record, based on the comments that were made by the gentleman
10 standing next to the one questioning, saying that, look, we certainly
11 know that there are people who are not using their press passes at
12 all.
13 MR. TORRY: Are you pointing at me?
14 MR. ACKERMAN: No, no, the gentleman next to you, just
15 for the record.
16 MR. KUHNHENN: But you make a case in your brief that this
17 is denying you access to information that you need. I'm just trying
18 to establish as a basis of fact how often. I'm trying to get at that
19 point. I'm not trying to get at it in terms of making a decision as
20 to whether to grant you or not grant you, but you raise it in your
21 brief.
22 MR. ACKERMAN: And that's an editorial judgment issue,
23 whether or not a reporter feels the need to go to the Senate every
24 day.
25 MR. SPERRY: So we can be monitored as to where we're
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1 going by Mr. Keenan.
2 MR. ACKERMAN: There are reporters in here where -- there
3 was somebody expecting more than one person to be here today, but
4 they're running off in ten different directions. I think that the
5 number of times that it's used is a matter of editorial discretion.
6 If they want to go once a week, well, that's one thing. If they want
7 to go once a month or if they want to be like some of the folks at
8 Bovard or one of the others who may not ever show up in a period of
9 two or three years, well, that's a totally different issue.
10 To focus on, well, geez, you're not using it 100 times a
11 year --
12 MR. FARAH: By the way, this wasn't one of the reasons
13 you rejected the application on, so it's interesting that we keep
14 hearing more and more reasons. I've heard them for 15 months, a
15 series of guilt by association accusations. Now we're hearing one.
16 If this was relevant, why wasn't it included as one of the reasons
17 for objection to the application?
18 MR. TORRY: I'm brand new. I'm a member of the board for
19 the last two months. It's a question that I wanted to get an answer
20 to. I still haven't gotten an answer to it. More than once, that's
21 it?
22 MR. SPERRY: Am I supposed to document for you or I was
23 supposed to foresee your question?
24 MR. TORRY: You can't estimate? Twice a week, once a
25 month, once every six months?
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1 MR. SPERRY: No, I can't. No, I can't. I'm sorry.
2 MR. ACKERMAN: Objection, privacy, freedom of
3 association, for the record.
4 MR. SPERRY: By the way, the issue is full access, not
5 day pass access. We don't need -- we're professional journalists.
6 We do not need our hands held by Mr. Keenan every time we want to

7 cover the halls of Congress.

8 MR. SHEPARD: Can you take me through a typical day? You
9 have 13 editorial staffers, 3 part-time, a dozen freelance, right? A
10 typical day, how are the assignments made? How do you decide what to
11 cover? You've worked in a news room and gave us your resume. I
12 wondered just how does that operate?

13 MR. ACKERMAN: Just a second. Objection, privacy. But
14 notwithstanding, go ahead and answer him.

15 MR. SHEPARD: I don't understand.

16 MR. WIGGINS: You don't need to worry about the
17 objection. It's legal gobbledegook is what that is.

18 MR. SHEPARD: We're talking about public access and
19 privacy.

20 MR. ACKERMAN: The concern is if you ask somebody, well,
21 gee, how do you conduct your private business.

22 MR. SHEPARD: Well, I was just curious.

23 MR. ACKERMAN: I'm not having a problem with him
24 answering. I do want him to answer it, because I want him to be as
25 responsive to your concerns as possible, and that's why.

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1 MR. SHEPARD: Do they have beats? Do the reporters have
2 beat systems?

3 MR. FARAH: Our procedures are very similar to the
4 procedures that I used running the Sacramento Union, the Los Angeles
5 Herald Examiner, and other daily newspapers. We have assignment
6 editors, we have some reporters like Paul Sperry who work
7 independently, basically pursuing whatever investigative projects he
8 deems worthy of pursuing. We have reporters who work as general
9 assignment reporters. We have others who are more like beat
10 reporters. We have at least two editors who are responsible for a
11 majority of assignments.

12 The only thing different about it is that it's so
13 decentralized. We don't have it all taking place in one building.

14 MR. SHEPARD: Do you make the assignments?

15 MR. FARAH: No, I don't.

16 MR. SHEPARD: That's what I was trying for. How does it
17 work? They're free agents?

18 MR. FARAH: Who?

19 MR. SHEPARD: The reporters.

20 MR. FARAH: No. I just explained to you that it's just
21 like a daily newspaper, where some of them have beats, some of them
22 respond to assignments from editors, others work virtually
23 independently, like Paul, who writes his stories, tells us what he's
24 doing, and hands it in. There's nothing mysterious about it other
25 than the fact that it doesn't take place in one building, although

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1 the majority of editors work in one building.

2 But it's a procedure that, aside from the logistics of it
3 and the look of it, would be not unfamiliar to you.

4 MR. SHEPARD: What kind of beats are there besides the
5 investigative?

6 MR. FARAH: Well, you know, we have some reporters who --
7 we have one reporter who's more oriented to education. That doesn't
8 mean she only covers education, but if an education story comes up
9 she's going to be the most likely reporter to jump on it.

10 But all of the stories that we do are stories of national
11 significance. That's the litmus test that we have. So we don't,
12 with our 13 staffers, we don't have to cover PTA meetings or board of
13 education meetings or anything of that nature, so you've got 13
14 bodies who are all devoted to doing national stories.

15 If you think about it in those terms, that looks pretty
16 good even compared to some of the bigger news organizations.

17 MR. SHEPARD: What other beats besides education?

18 MR. SPERRY: John Dougherty, military.

19 MR. FARAH: Military is another one. One common
20 denominator that you'll find running throughout 90 percent of our
21 stories or more would be the focus on government. We cover
22 government and we cover it in a way that we think is more aggressive
23 and more of a watchdog role.

24 MR. SHEPARD: Well, what other parts of government?
25 Education, military, and Paul doing investigative. Other areas?

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1 MR. ACKERMAN: Objection, content-based, First Amendment.

2 MR. SPERRY: I cover the waterfront.

3 MR. FARAH: With the number of staffers we have, there
4 aren't many other specialists, if that's what you're asking.

5 MR. SPERRY: We really don't have enough staff to have
6 government broken down into a lot of different beats right now.

7 MR. SHEPARD: You mentioned earlier the freedom of
8 association. You weren't suggesting that we could be members of the
9 Democratic Party and be up here covering Congress or members of the
10 Republican Party? You weren't suggesting anything like that, were
11 you?

12 MR. ACKERMAN: Absolutely not. The freedom of
13 association concern is that when you focus on somebody and you say,
14 hey, do you hang out with Larry Klayman, do you hang out with Mr.
15 Scaife, do you hang out with such and such, and then you use that as
16 a basis for determining whether or not you can give somebody access
17 to a First Amendment right. I don't think anybody would deny that
18 the First Amendment is certainly at the periphery of what we're
19 talking about today, if not at the core. What you can't use is who I
20 hang out with as a basis for denying me or granting me a privilege or
21 a right, and that's where I'm going.

22 I don't know who they hang out with and, frankly, I don't
23 care. I guess if they were hanging out with the terrorists or
24 something I'd be a little concerned, but that's not the case and
25 there's no such interest here. There's not a safety risk to the

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1 Senate Press Galleries. There is not some imminent danger. There's
2 nothing here to suggest that their connection to the Western
3 Journalism Center would somehow impinge upon the interests for which
4 the Senate Press Gallery has these rules, and those are historically
5 laid out in the Consumers Union case: safety of the members of
6 Congress, not importuning its members.

7 There's a long list of things that constitute valid
8 grounds for having these rules and when you apply the bases for the
9 rule to WorldNetDaily it just doesn't flush out. These guys aren't a
10 risk to the Senate Press Gallery. They're not importuning Congress
11 members. Nobody has ever shown that these guys are somehow trying to
12 bribe members of the legislature, nothing like that.

13 These guys are just reporting and that's it. That's at
14 the core of the First Amendment, and who they hang out with is,
15 frankly, none of the committee's business absent one of those
16 concerns as laid out by the D.C. Circuit Court of Appeal.

17 MR. SHEPARD: I'm not clear what your relationship or
18 past relationship was with the Western Journalism Center. You have
19 no relationship at all now?

20 MR. FARAH: Okay, we can go over this for the umpteenth
21 time and I'm happy to do it, because if it brings clarity to this
22 issue with some finality I'll be very grateful.

23 MR. SHEPARD: But you don't have any relationship with

24 them now?

25 MR. FARAH: Can I answer the question?

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1 MR. SHEPARD: My question was do you have any
2 relationship with them now?

3 MR. ACKERMAN: He does.

4 MR. FARAH: Do I have a relationship with it? Do I have
5 a relationship with the people in this room? Yes.

6 MR. SHEPARD: Well, do you have any official --

7 MR. FARAH: Let me answer the question.

8 MR. SHEPARD: Your lawyer just did. He said you do have
9 one.

10 MR. ACKERMAN: Well, no. He told you he's going to
11 elaborate on it.

12 MR. FARAH: I'm the founder of Western Journalism Center.
13 I'm told that one of the objections to our accreditation came when
14 Mr. Keenan or somebody on the committee looked at the web site of the
15 Western Journalism Center and saw a picture of me. Gasp, a picture
16 of me, the founder. I dare say we'll find pictures of George
17 Washington around the Congress. That doesn't necessarily imply that
18 he has any ongoing relationship with anybody in this building.

19 I'm the founder of Western Journalism Center. In 1999,
20 at the recommendation of our attorneys and for the reasons that we
21 felt it was very important at that point for WorldNetDaily to become
22 a for-profit operation in order to realize its potential, we needed
23 investor capital. A charity was not the proper framework for us the
24 continue our growth pattern. We went through an elaborate process
25 involving the secretary of state's office in California, the IRS, the

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1 Securities and Exchange Commission, and so forth, jumped through all
2 the government hoops, a procedure that took over 18 months to
3 complete, and we spun off WorldNetDaily as a for-profit operation.

4 In doing so, I had to resign from my position as
5 executive director of the center, as a board member. My wife
6 Elizabeth resigned as a board member. We cut all ties. Now, the
7 reason for that is one thing, one thing only: It is improper for a
8 for-profit corporation to benefit in any way from the activities of a
9 nonprofit, not the reverse, but only that one-way direction.

10 So I have done everything that I can humanly do in the
11 time that God gives me to help Western Journalism Center survive for
12 the last two and a half years. I've written fund raising letters for
13 them. I let them use my picture on the web site. I've helped them
14 even search and recruit other board members and future executive
15 directors. I'll continue to help them in any way that I can in the
16 limited time that I have.

17 That is the relationship between myself and Western
18 Journalism Center. But there is no relationship going the other way.
19 Western Journalism Center doesn't tell WorldNetDaily what to do.
20 Western Journalism Center doesn't have any clout with WorldNetDaily
21 in terms of fostering any kinds of agenda, if they had an agenda
22 other than good journalism, which they don't.

23 So that is my long answer to your simple question.

24 MR. KUHNHENN: Is there a financial relationship at all?

25 MR. FARAH: No.

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1 MR. KUHNHENN: In either direction?

2 MR. FARAH: Well, there is. We just signed an agreement
3 with Western Journalism Center, because it owns such a substantial
4 amount of stock -- which by the way, again, it was structured that
5 way for one reason, to avoid any appearance that Western Journalism

6 Center was getting the short end of the stick in the incorporation
7 process of WorldNetDaily as a for-profit entity.

8 Western Journalism Center wound up with the lion's share
9 of stock. Now it's been two and a half years. It's a completely
10 different environment in this economy. People don't realize now that
11 every with a "dot-com" after their name is not going to be a
12 billionaire. So we have structured a deal with Western Journalism
13 Center to buy back that stock.

14 We have an option agreement on all of the stock, which
15 amounts to about \$2 million, and we have a secondary agreement that
16 allows us to buy back small pieces of the stock as the revenues of
17 WorldNetDaily allow that to happen, but again at the same price, at
18 50 cents a share and so forth, that they originally got.

19 So that's the relationship.

20 MR. KUHNHENN: And that lion's share has dwindled down to
21 roughly what percentage at this point?

22 MR. FARAH: It started out as -- you can imagine when we
23 had no investors, at 100 percent, and it's now down around the 50
24 percent point.

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1 MS. SMITH: Do you share any staff or office space
2 between the two organizations?

3 MR. FARAH: No.

4 MR. ACKERMAN: Again, just for the record I'd object to
5 some of the questioning, not all of it, as being irrelevant if what
6 we're looking for is a uniform application of the Senate Rules.

7 MR. FARAH: Exactly. These are good questions for the
8 IRS, but I don't see why they're relevant to the Senate Press
9 Gallery.

10 MR. SPERRY: They're headquartered in different states as
11 well, Donna.

12 MS. SMITH: I'm sorry?

13 MR. SPERRY: They're headquartered in different states.

14 MR. FARAH: They're incorporated in different states and
15 completely independent operations.

16 MR. ACKERMAN: Then as an offer of proof on the
17 objection, we know that Religion News Service, Boston University,
18 Medill, Washington Times, Christian Science Monitor all have
19 connections to nonprofits in one way or the other or are controlled
20 directly by nonprofits. So to the extent the uniform application of
21 the rules is relevant here today, I don't see where the line of
22 questioning gets us anywhere.

23 MR. SPERRY: As well as the Medill School of Journalism.

24 MR. FARAH: And the Washington Times.

25 MS. SMITH: I just want to understand one argument that

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1 you were making earlier. You're not arguing that we should
2 credential news arms of 501[c][3] organizations, are you?

3 MR. FARAH: I couldn't care less whether you --

4 MS. SMITH: Actually, I was talking to Mr. Ackerman.

5 MR. ACKERMAN: I would suggest, without knowing the
6 entire legal framework for some of the organizations that I've just
7 mentioned, that you've already done that. Never mind whether you
8 will, it sounds to me like, given some of the members of the 300 or
9 so members who are religiously based, who are in one way or another
10 connected to nonprofits, that you probably already have credentialed,
11 quote unquote, "news arms" of otherwise nonprofit entities.

12 So I don't know if that's responsive to your question,
13 but I think if your concern is that you shouldn't, it sounds like you
14 already have.

15 MR. ROBERTS: Mr. Farah, regarding the ownership, when
16 you resigned as a board member at Western Journalism Center were you
17 the chairman?
18 MR. FARAH: Yes.
19 MR. ROBERTS: When was that?
20 MR. FARAH: That was in 1999.
21 MR. ROBERTS: 1999. And who replaced you?
22 MR. FARAH: Jim Smith.
23 MR. ROBERTS: So now Jim Smith is the leader of the
24 Western Journalism Center?
25 MR. FARAH: Yes, he is.
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1 MR. ROBERTS: The arrangement regarding the stock and the
2 buy back --
3 MR. FARAH: Jim Smith by the way, just as a point of
4 information for all of you, is a former president of the Washington
5 Star, the former general manager of the Sacramento Bee, the former
6 publisher of the Sacramento Union, the former president of the San
7 Antonio Express, and has a life-long career of achievement in the
8 daily newspaper business. So he's not some activist, advocacy type
9 of person. He's spent his entire career, like I have, in the
10 newspaper business.
11 MR. ROBERTS: When you made the arrangement to buy back
12 the stock, when was that?
13 MR. FARAH: Well, it was just signed in the last 30 days.
14 We've been talking about it for a year probably.
15 MR. ROBERTS: So you haven't actually been buying back
16 any stock for the last year?
17 MR. FARAH: No, no. All of the dilution is caused by new
18 purchases of stock over the last two and a half years.
19 MR. ROBERTS: How did you set the price for the buy back?
20 MR. ACKERMAN: Objection, privacy.
21 MR. ROBERTS: Well, I think what I'm trying to find out -
22 - and really it is important to the decision of the committee -- is
23 whether it's an arm's length transaction.
24 MR. FARAH: It has to be an arm's length. Are you
25 accusing me of violating the law? It has to be an arm's length
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1 transaction.
2 MR. SHEPARD: Nobody's accusing you of anything.
3 MR. FARAH: Well, that's what he's doing.
4 MR. ROBERTS: Please explain.
5 MR. FARAH: Is this the proper forum? is this the SEC or
6 is this the Senate Press Gallery? It has to be an arm's length
7 transaction.
8 MR. ACKERMAN: I understand, but if you're trying to get
9 to whether they're independent, which I suspect is exactly where
10 you're going --
11 MR. ROBERTS: Exactly, that's where I'm going.
12 MR. ACKERMAN: I think that he can explain whether or not
13 he's independent without having to lay out his wallet on the table so
14 you can see how the money flows in and out.
15 MR. ROBERTS: I agree with that, and really that's the
16 spirit of my question.
17 MR. FARAH: We let Western Journalism Center decide what
18 a fair price was, essentially, is the answer to your question.
19 MR. SHEPARD: Was it based on book value of the
20 WorldNetDaily corporation or was it just completely up to them?
21 MR. ACKERMAN: The same objection and I'm going to
22 instruct him not to answer. Privacy.

23 MR. ROBERTS: Okay.

24 MR. ACKERMAN: I'm not doing that to be furtive. Just I

25 in good faith think that you're pushing up against the boundaries of

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1 what the law would otherwise permit you to ask. Mr. Wiggins and I

2 can work it out. Frank, if it turns out that you and I discuss this,

3 I can have my client provide a written response or something. If you

4 and I can convince each other that it is indeed relevant, we'll work

5 something out.

6 MR. SPERRY: I don't see how it is relevant to the Senate

7 Rules on lobbying.

8 MR. ROBERTS: Mr. Farah, Western Journalism Center, as I

9 understand it the primary activity is they accept contributions from

10 foundations and individuals which are charitable contributions.

11 Under 501[c][3] there is a tax benefit for a contributor.

12 MR. FARAH: Correct.

13 MR. ROBERTS: Those funds are then channeled into

14 activities, which again as I understand is reporting activity?

15 MR. FARAH: Yes, and some internships.

16 MR. ROBERTS: And it funds internships. Contributors to

17 the foundation, can they say, we want to give you \$100,000 and can

18 you talk to us about projects that we might like to do? Or do they

19 say --

20 MR. FARAH: They can do that, but it would be not

21 accepted with strings attached, if that's what you're asking.

22 There'd be nothing illegal about it, but it's not journalistically

23 sound.

24 MR. ACKERMAN: And objection, privacy, freedom of

25 association.

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1 MR. ROBERTS: So essentially it's up to the foundation to

2 decide what projects it wants to undertake?

3 MR. FARAH: The foundation being the center?

4 MR. ROBERTS: Yes.

5 MR. FARAH: Right, they set their own agenda.

6 MR. ROBERTS: And when you were the chairman what was it

7 that you undertook other than WorldNetDaily?

8 MR. ACKERMAN: Relevance, just for the record. You can

9 go ahead and answer.

10 MR. FARAH: The mission statement of Western Journalism

11 Center is very close with the mission statement of WorldNetDaily,

12 which is why it was a natural to begin WorldNetDaily under the

13 auspices of the center. The mission statement has always been and

14 continues to be for the center serving that vital watchdog role of

15 the press in terms of government watchdog role and investigating

16 fraud, waste, abuse, and corruption in government wherever it's

17 found, whoever is responsible for it.

18 As you know, the center happened to have been founded

19 during the Clinton Administration, so much of the activity from 1994

20 when it became active through the year 2000 had to do with

21 investigating Bill Clinton, and the center was at the center of

22 uncovering and breaking many Clinton Administration scandals. That's

23 a matter of record.

24 In fact, the White House at the time issued a 361-page

25 report called "The Communications Stream of Conspiracy Commerce,"

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1 which alleged that Western Journalism Center was indeed, along with

2 Richard Mellon Scaife, at the epicenter of that vast right-wing media

3 conspiracy that I alluded to in my opening statement.

4 MR. ROBERTS: I only see four of you here. [Laughter]

5 MR. FARAH: What's that?

6 MR. ROBERTS: I only see four of you. Not too vast.

7 MR. FARAH: What the Clinton Administration missed was
8 the fact that that kind of reporting, that kind of aggressive
9 reporting -- at least I can speak for WorldNetDaily now -- continues
10 with the Republican administration. We have just as many people
11 unhappy with us in the White House as we had in the previous.

12 MR. ROBERTS: When Western Journalism Center still owned
13 WorldNetDaily, did the projects of Western Journalism Center get
14 published on WorldNetDaily? Did you produce the results?

15 MR. FARAH: Yes. Prior to October 1999, yes, that was
16 the case.

17 MR. ROBERTS: Would you feel that that would
18 be --

19 MR. FARAH: And we'd do it today, too. If Western
20 Journalism Center produced something we thought was worthy of
21 publication, we'd publish it again.

22 MR. ROBERTS: Hypothetically, if Western Journalism
23 Center still owned and controlled WorldNetDaily and WorldNetDaily
24 published results of a project undertaken by Western Journalism
25 Center, would you see that as a problem for this committee in terms
2047 of credentialing you as independent media?

1 MR. FARAH: None whatsoever. Western Journalism Center's
2 reporting has been published by the Wall Street Journal, by any
3 number of for-profit entities other than WorldNetDaily, and I don't
4 think you'd have trouble accrediting any of them. So I don't know
5 how that would be problematic for anyone.

6 MR. SPERRY: How is that different from the Medill School
7 projects? Medill is a nonprofit.

8 MR. ROBERTS: Western Journalism Center -- excuse me.
9 Western Journalism Center paid actually to reprint some of its work,
10 some of its work, in major daily newspapers?

11 MR. FARAH: I'm not sure what you're referring to.

12 MR. ROBERTS: Didn't the Christopher Ruddy stuff on Vince
13 Foster get reprinted as an advertisement?

14 MR. FARAH: Oh, yes.

15 MR. ROBERTS: In your mind, does that represent an
16 independence problem for this committee?

17 MR. FARAH: Because they paid to get the work out?

18 MR. ROBERTS: Yes.

19 MR. FARAH: No, I don't see any problem with that
20 whatsoever. Why would that be a problem?

21 MR. ROBERTS: Well, I think it is.

22 MR. SPERRY: This was before '99, right?

23 MR. ROBERTS: Yes.

24 MR. FARAH: It was before WorldNetDaily --
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1 MR. ROBERTS: It's before current standing, and what I
2 want to try to do is differentiate where you are now from then,
3 because I think where you are now is a much more independent status.
4 Correct?

5 MR. FARAH: Much more independent than what?

6 MR. ROBERTS: Much more independent of Western Journalism
7 Center.

8 MR. FARAH: Yes. But just so you understand, when I was
9 directing Western Journalism Center I was directing it as closely as
10 I direct WorldNetDaily today. The force behind Western Journalism
11 Center was me, the force behind WorldNetDaily today is me.

12 But I'm not sure what you're getting at. Can you explain
13 to me why purchasing advertising space by a nonprofit to get a

14 certain message out is problematic for this committee?

15 MR. ACKERMAN: Frankly, I'm a little bit confused, too,
16 because we certainly know that there are plenty of politicians who
17 are busy spending advertising dollars for their campaigns to
18 advertise in papers and to do things like that, and certainly you
19 wouldn't think that that's a problem. What it sounds like to me is
20 that there is somehow a misstatement of the test for independence
21 under Rule 4.B.

22 Again, I can't understand where these questions go to
23 some evidence that they're somehow trying to persuade members of the
24 legislature to do something or that they're trying to buy the people
25 or that they're trying to do anything that the Consumers Union case
2049 admonished reporters not to do.

2 MR. FARAH: To my knowledge, all of the newspapers that
3 Western Journalism Center advertised in are all accredited members of
4 this gallery. So if there's a problem for giving the money, is there
5 also a problem with receiving the money?

6 MR. ROBERTS: Let me come back to Western Journalism
7 Center and the relationship with WorldNetDaily, because it really is
8 vital to our decision and whether we reverse ourselves. At the top
9 of your statement you said you didn't have much hope that we would
10 and I want to assure you that if there's a way to do it we're going
11 to find it.

12 MR. FARAH: There's a way, I assure you.

13 MR. ROBERTS: I think we need to understand that Western
14 Journalism Center and WorldNetDaily are entirely separate, and we
15 don't have that understanding at this point.

16 MR. FARAH: By law, by law they must be totally separate.

17 MR. ROBERTS: That is tax law? Is that tax law or what's
18 the law?

19 MR. FARAH: Yes, and SEC.

20 MR. ACKERMAN: That's tax law, that's corporate law,
21 that's conflicts of interest law, that's fiduciary duty law. There's
22 a whole series of bodies of law that apply here, primarily the laws
23 dealing with fiduciary duty. He can't be riding both sides of the
24 fence as a matter of law.

25 I think that in terms of what's being reported by
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1 WorldNet, it shows that they're not afraid to report independently
2 and to state what they need to state. If this were a 501[c][3], I
3 think that there'd be different issues. But you can see that what
4 WorldNet is doing is clearly different from what a 501[c][3] would be
5 doing.

6 MR. ROBERTS: One of the problems that this committee had
7 when we undertook to understand this application was we didn't know
8 who WorldNetDaily is or what it was. When Joe Keenan called Mr.
9 Sperry to ask questions, he referred him to you, Mr. Farah.

10 MR. SPERRY: That's not accurate.

11 MR. ROBERTS: Is that not accurate?

12 MR. SPERRY: About ownership? Well, when he -- not
13 initially. If the committee will indulge me just a moment to clarify
14 the whole sequence of events, February 8th is when we applied for
15 accreditation. Mr. Keenan asked that we do something different than
16 what we were asked at Investors Business Daily, which was to say how
17 do you make money and what do you cover?

18 So I submitted an addendum to the application, a letter
19 to him, on February the 8th, 2001. He said: Okay, there should be
20 no problem.

21 MR. ROBERTS: Can we have that in the record?

22 MR. SPERRY: February 8th, 2001.

23 MR. ACKERMAN: May the record reflect that what Mr.
24 Sperry is referring to is the February 8th, 2001, letter to Mr. Joe
25 Keenan from Paul Sperry himself. It's a one-page document. Frank,
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1 again, if you need copies of whatever, we'll arrange.

2 MR. SPERRY: So the initial concern articulated by Mr.
3 Keenan to me was that, you're an Internet company with no off-line
4 companion publication; that's a new breed of animal for us, so could
5 you tell us how you make money and what you cover. So I did that in
6 this letter.

7 He said: There should be no problem; let me put this
8 before the committee. Then I didn't hear from him. This was
9 February, keep in mind. I continued to use my Investors Business
10 Daily pass, which had not expired, to come to Congress, to cover
11 Congress.

12 April 23, 2001, is when he said that, after I didn't hear
13 back from him, Mr. Keenan said that the committee would meet, that we
14 were going to be put on the agenda to be considered, and nothing,
15 heard nothing back. Oh, and he said he would notify me of the
16 decision. Never heard back.

17 Waited a little while and called him back to see: What's
18 going on, Joe? He says in an email on June 26th that WorldNetDaily's
19 application had been included with three submitted to the committee
20 for an upcoming meeting; he would notify me. Never heard back from
21 him.

22 So I had to call him back and ask him: What's going on?
23 Oh, you will be considered by the committee Labor Day. That was in
24 an email to me from him August 27th. So this whole time I'm having
25 to use my Investors Business Daily hard pass with my photograph to
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1 get in to cover Congress.

2 It just seemed like there was this delay after delay. I
3 said: What's going on, Mr. Keenan? The next issue was: Oh, you
4 seem to be a nonprofit. No, I assure you that we're not; we're
5 incorporated in Delaware as a for-profit.

6 Then the next issue was the Western Journalism Center.
7 That's when I referred him to Mr. Farah and to our managing editor
8 David Kupelian.

9 MR. ROBERTS: When was that?

10 MR. SPERRY: That was probably late that summer, if not
11 early fall of last year. I can get the emails for you.

12 Then in subsequent conversations with them that I was not
13 privy to, Judicial Watch suddenly became an issue.

14 MR. FARAH: And Richard Mellon Scaife.

15 MR. SPERRY: And Richard Mellon Scaife. And then after
16 that it became original content, not enough original content, which
17 was the final decision that you have written us in writing as to the
18 final decision. So that is basically the long and short of what
19 happened over the last year.

20 I'm not known as a very patient person and to me that
21 whole year, to be sitting there waiting and waiting and Mr. Keenan
22 never would get back to me, it just seemed like delay, grasping at
23 straws, a new issue, a new issue.

24 MR. ROBERTS: Can I ask you to give us copies of those
25 emails if you still have them?
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1 MR. SPERRY: Sure.

2 MR. ACKERMAN: May the record reflect that I asked for
3 those emails and any communications concerning this, and again -- and
4 you reminded me at the beginning of this that you are a governmental

5 arm, so I assume that you've preserved evidence as required by law.

6 MR. ROBERTS: Actually, I don't know that we have the
7 emails.

8 MR. KEENAN: We don't.

9 MR. ACKERMAN: If they have been destroyed, well, then I
10 want that for the record.

11 MR. WIGGINS: Rich, these are emails not to the
12 committee. They're emails between the applicant and Joe; is that
13 right, Joe?

14 MR. KEENAN: There were two. Is that right?

15 MR. WIGGINS: Well, whatever there is, you offered to
16 provide them, Rich. If you've got a problem with it, let's you and I
17 talk.

18 MR. ACKERMAN: But see, when we're talking about a denial
19 of a First Amendment right the burden is on you.

20 MR. WIGGINS: Mr. Ackerman, why don't we save that,
21 because I really want to understand what Paul's telling us.

22 MR. ACKERMAN: I just want to make a clear record. I
23 understand your concerns, sir.

24 MR. ROBERTS: And you've been doing that throughout and
25 I'm sure you'll continue.

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1 MR. ACKERMAN: Yes, I'm just duty-bound.

2 MR. ROBERTS: Let's try to keep the sort of legal static
3 to a minimum so we can communicate here.

4 MR. ACKERMAN: I cannot keep my constitutional rights or
5 the constitutional rights of my clients to a minimum.

6 MR. ROBERTS: I'm not asking you to --

7 MR. WIGGINS: Let's just, why don't you ask your
8 question.

9 MR. ROBERTS: Your Investors Business Daily card, weren't
10 you supposed to turn that in?

11 MR. SPERRY: No one told me to.

12 MR. ROBERTS: Doesn't it say on the back that you're
13 supposed to turn it in?

14 MR. SPERRY: Does it say it on the back of your cards?
15 What does it say?

16 VOICE: It says on the front.

17 MR. ROBERTS: I believe you are, when you leave the
18 employment of the credentialed --

19 MR. SPERRY: It says what?

20 VOICE: It expires April 30th.

21 MR. SPERRY: I know, but does it say turn it in? Can
22 somebody help me here?

23 MR. ROBERTS: One of the things I'm trying to understand
24 here is we weren't aware the you had this card that you were relying
25 on, so there's an interesting factual matter that's emerging here.

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1 MR. FARAH: I told Joe Keenan that in a conversation on
2 the telephone many, many months ago.

3 MR. SPERRY: How did I have any other choice if I had to
4 continue to do my job when he was delaying over and over our
5 application for consideration?

6 Did you have a meeting on us in June or July of 2001,
7 like he said, along with two other applications?

8 MR. ROBERTS: I'm sure that it's reflected in the minutes
9 of the committee when we had our meetings and when we talked about
10 WorldNetDaily in a decisive way.

11 MR. SPERRY: I'd be interested to know if you can provide
12 that documentation, because it seemed like we were getting a run-
13 around for a full year.

14 MR. ROBERTS: Well, I apologize for that, if in fact you
15 felt like you were getting the run-around. One of the problems that
16 the committee had, however, was that we did not know who
17 WorldNetDaily was, and when we tried to find out we had trouble --

18 MR. SPERRY: Day one, day one -- and I'll submit this --
19 I fully informed Mr. Keenan February 8th who we were and what we did.

20 MR. ROBERTS: Okay. It's also getting all the answers.

21 MR. SPERRY: There's data on line --

22 MR. TORRY: One at a time. One at a time, please.

23 MR. SPERRY: PC Data Online had a tracking of our
24 readership, our page impressions, unique visitors. I included all
25 that data, how we made money from banner ad sales, e-commerce sales.

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1 I answered all those questions. You knew who we were February 8th if
2 you didn't know us otherwise.

3 MR. ROBERTS: Actually we didn't. This brings me back to
4 Mr. Farah. As I understand it from Joe, when we called you to find
5 out about the apparent connection between WorldNetDaily and Western
6 Journalism Center, we were told there's none, that you started
7 WorldNetDaily at home on a home computer.

8 MR. FARAH: Well, that's absolutely true. We started it
9 in our off hours. We believe, Elizabeth Farah and I, that we were
10 extraordinarily generous in suggesting that Western Journalism Center
11 should own a substantial portion of WorldNetDaily, based on the fact
12 that both she and I did this in our spare time. That's a fact.

13 Now, I think you're confusing two issues here. As a
14 matter of law, there's a relationship, there's no question about it.
15 It's a spinoff corporation. The documentation on that is clear. As
16 a matter of reality, it was actually started quite independently.

17 But to avoid any even appearance of personal benefit,
18 personal inurement I believe is the term, we decided that, hey,
19 Western Journalism Center will own the lion's share of the stock and
20 we'll figure out some exit strategy later. That's the procedure
21 we've been following ever since.

22 MR. ROBERTS: Did you get start-up funding, did I read
23 correctly in one of the clips that you got some start-up funding,
24 \$4.5 million? Is that correct?

25 MR. FARAH: Approximately \$4.5 million.

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1 MR. ROBERTS: Did that come from the Western Journalism
2 Center?

3 MR. FARAH: No, Western Journalism Center has never put
4 any money into WorldNetDaily.

5 MR. ROBERTS: So this start-up funding came from a
6 private investor or somebody else?

7 MR. FARAH: Many private investors, yes.

8 MR. ROBERTS: With no link to Western Journalism Center?

9 MR. FARAH: No link to Western Journalism Center.

10 MR. ROBERTS: Then why does Western Journalism Center own
11 so much stock?

12 MR. FARAH: Because of the peculiarity, if any of you
13 have ever done reporting on this kind of thing -- I'll give you an
14 example of what we're talking about. There have been a number of
15 very high profile nonprofits that have become a venture, that after
16 they began it they realized, wait a minute, this is potentially
17 hugely profitable; we have a choice here, we can keep it as part of
18 the nonprofit and not realize that full potential because you can't
19 get investor capital and so forth -- all you can do is beg for
20 dollars as a charity -- or you can spin it off and let this thing
21 compete in the marketplace.

22 That's what we chose to do. When you do that, you're
23 playing suddenly with a lot of government oversight, because
24 charities get more government oversight than private corporations do.
25 One of the things that, particularly in this case, since Western

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1 Journalism Center was incorporated in California, the secretary of
2 state's office there has oversight, an oversight relationship with
3 the charities, and frankly in California their attitude is the state
4 owns charities. It's basically that rigid in terms of you can't do
5 anything with a charity without the state's permission.

6 With that in mind, we wanted to be very careful that we
7 obeyed all the laws and followed all the procedures in creating a
8 spinoff, and every step of the way we went and got permission from
9 the secretary's office, got their approval to do the spinoff, to
10 follow their explicit rules and regulations, also keeping in mind the
11 special requirements of the IRS and the SEC.

12 That's why we were overly generous. Anyone looking at
13 this in 2002 would look back and say, why does Western Journalism
14 Center own so much. Because we wanted to make sure there were no
15 allegations of personal inurement on my part and Elizabeth Farah's
16 part because we were the primary forces behind it, and because
17 ostensibly we started this endeavor as a nonprofit. That is an
18 accusation that could put us behind bars. So do we want to risk that
19 or do we want to bend over backwards and make sure that Western
20 Journalism Center is not only treated fairly, but beyond fairly, so
21 there could be no questions of whether they were treated fairly.
22 That's why.

23 MR. ROBERTS: Anybody else have questions on this cross-
24 ownership issue?

25 MR. TORRY: No.

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1 MR. ROBERTS: I want to talk to you about and ask you
2 some questions about original content, original reporting content. I
3 want to try at least preliminarily to clear up what I think is a
4 misperception on the part of your attorney and perhaps you guys about
5 what that standard is. The 1996 Internet standard really is not,
6 it's not a content standard, it's a reporting standard. I think we
7 all think about it that way.

8 We really don't care what you say on your web site. What
9 we looked for and what we had trouble finding was original reporting.
10 To Mr. Sperry's credit, nine times out of ten when we looked at the
11 site and we did find original reporting it was his.

12 MR. FARAH: Well, Sperry's not even our most prolific
13 reporter. He may be our best.

14 MR. ROBERTS: There's no question that there's original
15 reporting on your site. What the committee had trouble with was we
16 couldn't find it. We'd go to the site and it looks a lot like
17 Drudge. It's a meta-page with links to CNN or MSNBC. Frequently the
18 lead story is, most of the time, not yours.

19 MR. FARAH: Not true. It depends what time of the day
20 you look at it.

21 MR. SPERRY: Even if it were --

22 MR. FARAH: Nine times out of ten, the morning edition,
23 which comes out at midnight every night, nine times out of ten the
24 top two stories will be original exclusive material by WorldNetDaily.
25 That's one of the requirements that I have as CEO of my staff.

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1 MR. ROBERTS: Well, we looked at it.

2 MR. FARAH: But see, you're looking at the wrong time of
3 day.

4 MR. ROBERTS: 9:00 a.m. We, all of us, found that over

5 quite a long period --
6 MR. SPERRY: Months, weeks?
7 MR. ROBERTS: It appears that 95 percent of the headlines
8 on page 1 and page 2 are other people's work. Now, I understand that
9 links are kind of a lingua franca of the Internet, but this is a
10 question of --
11 MR. FARAH: Can I ask you a question? What is the
12 percentage of original reporting content in the Columbus Dispatch?
13 Wouldn't you say that probably 80 percent is wire service material?
14 MR. TORRY: No.
15 MR. FARAH: How much? What percentage of your national
16 and international reporting?
17 MR. TORRY: It's probably 60 percent locally produced.
18 MR. FARAH: Of your national and international reporting?
19 MR. TORRY: You're talking about the whole newspaper?
20 MR. FARAH: National, international reporting.
21 MR. TORRY: Oh, I don't know.
22 MR. FARAH: Let's face it, the majority of newspapers are
23 packed with Associated Press.
24 MR. ROBERTS: I understand your point, but presumably the
25 Columbus Dispatch subscribes to the Associated Press. Do you?
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1 MR. FARAH: No. What difference does it make? So?
2 MR. SPERRY: We're smarter.
3 MR. ROBERTS: You're smarter?
4 MR. SPERRY: Yes.
5 MR. ROBERTS: What do you mean?
6 MR. SPERRY: We don't pay.
7 MR. FARAH: They should pay us. We give them a
8 tremendous amount of business. We have sites all the time that would
9 pay us, if we were unethical enough to take the money, to use their
10 material. They're getting the direct benefit from the visibility.
11 MRS. FARAH: They send us their budgets and ask us.
12 MR. ROBERTS: Really? Interesting.
13 MR. ACKERMAN: In terms of making its determination, I'd
14 certainly highly suggest that the committee take a look at the
15 Riverside Press Enterprise and make a determination as to original
16 content as compared to AP stories, Reuters, and whoever else, and see
17 if you don't end up coming up with a relatively small percentage of
18 original content.
19 It's nothing against Riverside Press Enterprise. It's a
20 great paper. That's just reality.
21 MR. ROBERTS: Another discrepancy here that I think is a
22 misperception between the applicant and the committee, we're not
23 talking about original content. Columnists are certainly original;
24 we don't care about the columnists. We're looking for the reporting.
25 Again, the problem that we have is you've got 95 percent reporting in
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1 terms of the news being done by other news organizations and what is
2 original for us was hard to find when you had it and infrequent.
3 MR. FARAH: Well, it's going to be even harder for news
4 agencies that are young, like ours, to do the kind of original
5 reporting we'd like to do when you systematically deny them access to
6 the Capitol.
7 MR. TORRY: Could you answer his question, please.
8 MR. ROBERTS: Well, I think he did.
9 MR. FARAH: It was totally wrong, but I'm doing the best
10 I can. Your analysis of our exclusives was not scientific and you
11 can't give us any evidence of how it was. You looked at it more than
12 once?

13 MR. ACKERMAN: And we asked for the evidence.
14 MR. FARAH: We provided you actual numbers. We're
15 talking about in the neighborhood of 4,000 original news stories
16 alone over a period of a little over two years. Now, run the
17 averages here.
18 MR. SPERRY: What's the bar, Bill, that you're setting
19 for original content? What is your litmus? For every applicant,
20 what is your litmus for original content?
21 MR. ROBERTS: I think, Joe, you made a very important
22 point and that is whether we're opening the door wide enough for
23 young Internet publications. What I'd like to know is whether you
24 think, as somebody who has successfully started a successful web site
25 during a period of time when a lot of web sites failed, you guys are
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1 still in business and that's a credit to you, are our standards, the
2 way we're looking at them and looking at you and the requirements of
3 operating in the Internet environment, are we missing something?
4 What are we missing?
5 MR. FARAH: Well, let me answer it this way. I told you
6 in my opening statement that one of the reasons I moved here to
7 Washington was so that I could be more involved, because this is the
8 place, if we're going to expand our editorial coverage over the next
9 couple of years, and I believe we will, that this is the place we're
10 going to do it.
11 How can we do that? What reporters am I going to be able
12 to hire when we can't give them -- I feared I would lose Paul Sperry
13 because he's come to me half a dozen times over the last 15 months
14 saying: Joe, I just can't do this, I can't cover the Capitol this
15 way, without the access that I've had previously.
16 Now, how am I going to go out and recruit more reporters
17 to work with Paul in covering Washington when they are not given that
18 kind of access.
19 MR. SPERRY: Bill, when you started, when Bloomberg
20 initially applied for accreditation, did you settle for day pass
21 access? Did you settle for that?
22 MR. ROBERTS: Well, again, this is another question that
23 I'm going to have to deflect.
24 MR. SPERRY: It goes to equal protection.
25 MR. ROBERTS: I think what I'm trying to understand is
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1 you guys are an Internet operation and we have a standard for
2 Internet sites in terms of accreditation.
3 MR. FARAH: A standard which we've never understood, and
4 we've specifically spent a lot of time on the phone.
5 MR. ROBERTS: If we could get you guys to understand it
6 the way we do, then maybe we could get the conversation on an even
7 plane that would help a lot.
8 MR. ACKERMAN: But can I address what the source of
9 confusion is for me? You still have rules in there that talk about
10 postage requirements in the actual Senate Rules as a prequel of
11 getting in. Then secondly, by allowing Internet folks in, whether it
12 be planetgov.com or whoever, you have created a First Amendment
13 forum. Then the issue becomes have you guys made your rules
14 consistent with maintaining that forum in a fair and equal way?
15 By looking at the rules themselves and in light of the
16 fact that you still have stuff in there about the postage, it's
17 unclear from an outsider's perspective. And it's what a reasonable
18 person looking at your rules would determine, because that's what due
19 process focuses on, is the person looking at the rule, not what you
20 guys think in the back of your minds.
21 I'm saying that out of all due respect. It's an outside

22 standard, not what you guys think it should be. It's what a
23 reasonable person would be able to look at, and that's what the
24 source of confusion is. I'm looking at the rules as a lawyer saying
25 I can't make sense of this.

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1 MR. FARAH: It's a moving target.

2 MR. ACKERMAN: It is a moving target.

3 MR. FARAH: And you've got James Bovard, and I think his
4 work is excellent, by the way. This is not meant to in any way
5 suggest otherwise. But you've got a one-man news agency like James
6 Bovard, who writes only commentary, by the way. You guys have acted
7 as if commentary is not even relevant to diagnose how much commentary
8 we have on our site, which is, by the way, more than any daily
9 newspaper in America, more original commentary in WorldNetDaily,
10 almost 40 original columnists, many of which have been syndicated out
11 of WorldNetDaily, like Bill O'Reilly and so forth.

12 But here's a guy who's a commentator, a good one and does
13 a lot of reporting in his commentary. But he's accredited. What's
14 the standard there, when Paul Sperry isn't? Now, Paul Sperry -- if
15 you want to just look at Paul Sperry and you don't think we have
16 enough original content beyond Paul Sperry, that's fine with me
17 because that's the only applicant we have on the table right now.

18 Are you going to tell me that Paul Sperry has not written
19 as much nationally significant news copy as James Bovard has or as
20 planet.gov has?

21 MR. ROBERTS: No, and that was not our yardstick. Our
22 yardstick was looking at your site in its entirety, we see 95 percent
23 news headlines from other news organizations.

24 MS. FARAH: 95 percent, is that quantified?

25 MR. FARAH: In other words, so it hurts us that we have a

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1 lot of stuff from outside on our site? If we just limited it to the
2 exclusives that we had --

3 MR. ROBERTS: That is correct.

4 MR. ACKERMAN: That's content-based discrimination and
5 it's bordering on viewpoint discrimination.

6 MR. ROBERTS: Well, that's a legal issue that I think our
7 lawyer is going to have to address. But I'm trying to tell you what
8 our judgment was. We looked at the site, we saw hyperlinks to other
9 news organizations. Occasionally we saw something from Paul Sperry.
10 To us that was not substantial original reporting daily.

11 MR. ACKERMAN: You should have seen the material from
12 John Dougherty, you should have seen the material from Rhea Helena
13 Kennedy. There's a whole list of reporters that regularly --

14 MR. FARAH: Let me explain something. One thing that we
15 don't do that maybe some agencies do is require our reporters to
16 write five stories a day. We have a full-time international roving
17 reporter who travels from country to country and writes stories that
18 he thinks are compelling when he feels like it, a full-time guy. You
19 don't see that at many daily newspapers. You probably haven't seen
20 his byline very much. That doesn't mean that he's not being paid a
21 lot. It doesn't mean that he's not producing a lot of very important
22 copy that when he does write is picked up all over the world.

23 Paul Sperry doesn't write that many stories. I wish he
24 wrote more. But he writes important stories when he writes.

25 MR. SHEPARD: Have you got any other jobs like that one?

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1 [Laughter.]

2 MR. SHEPARD: Where you travel around the world?

3 MR. ROBERTS: But it does go to the question of

4 frequency, which is another point, that when we looked at the site we
5 said, you know, it doesn't really feel like a daily in terms of their
6 original content.

7 MR. FARAH: It feels like a daily to two and a half
8 million other people who tell me they get most of their news from
9 WorldNetDaily.

10 MR. ROBERTS: But that I think is, my perception is,
11 that's because you're linking to CNN and MSNBC for your lead stories.

12 MR. ACKERMAN: If you tell them not to do it, then you're
13 engaging in prior restraint. If they did ten good stories a week and
14 you're saying but stay away from CNN, stay away from MSNBC, and just
15 focus on original, I have got something that sounds like a prior
16 restraint. You're saying we're going to prevent you from reporting a
17 certain way, and that's for the record.

18 MR. SPERRY: These 27 sample stories that you came up
19 with --

20 MR. FARAH: Planet.gov is out. That's erroneous
21 information about planet.gov being accredited. They're no longer
22 accredited.

23 MR. KEENAN: They changed their news operation. They
24 used to have a news operation. It's moved over.

25 MR. ROBERTS: The point is to me it does feel a bit

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1 argumentative, and I regret that, but I do feel that I've been able
2 to state to you how the committee viewed this Internet rule, which
3 was substantial original reporting content daily, and that we
4 struggled to find it on your site, and that that's the primary
5 reason, together with our perception that there was a link with
6 Western Journalism Center.

7 You guys have stated a lot of facts. We want to take
8 them under advisement. With your permission, I'd like to post the
9 transcript of this hearing on the Internet so that everybody can see
10 it, your audience, and let's let the chips fall and see where we are.

11 MR. SPERRY: Can we link to it?

12 MR. CLAWSON: Mr. Chairman, I'd like to speak on behalf
13 of this applicant if I might, please, since this is a hearing.

14 MR. WIGGINS: Yes, briefly.

15 MR. ROBERTS: Do you want to state your name?

16 MR. CLAWSON: Sure, I'd be happy to. My name is Patrick
17 Clawson. I'm presently with Radio America. I'm sorry to see the
18 sigh of dismay on your part, sir. I'm presently employed as an
19 executive with Radio America, which is a broadcasting operation here
20 in Washington.

21 I've been a journalist in Washington since 1975, formerly
22 with NBC and CNN. For many years I was in the print sector.

23 MR. ROBERTS: You've got a great voice for radio.

24 MR. CLAWSON: Thank you very much.

25 For a number of years I was in the print sector, and then

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1 about a decade ago I was elected to your counterpart over in the
2 Periodical Press Gallery, the Standing Committee on Correspondents
3 over in the Periodical Press Gallery. For two years I was a member
4 of that board and I reviewed press applicants, much as you're
5 reviewing WorldNetDaily today.

6 Also as part of my background -- and hopefully this will
7 bring a little bit of light into some of the financial dealings that
8 you've been inquiring about -- I also have been for many years
9 involved in mergers and acquisitions involving broadcasting and print
10 and Internet companies, and I've been certified as an expert in these
11 areas by courts in California and by federal courts in West Virginia.
12 So I've got a very extensive knowledge of media finance.

13 There's a number of points here I'd like to address, and
14 I'll make this as brief as possible. First, the issue of the
15 nonprofit status that WorldNetDaily began with a long time ago. It
16 is not uncommon for media organizations to begin life as nonprofits.
17 There's a lot of reasons for this that make very good business and
18 very good tax sense.

19 For instance, you can broaden out immediately the base of
20 revenues by which you're going to support the media organization,
21 because you'll have a donor stream in addition to a subscription
22 stream of revenue.

23 MR. WIGGINS: I'm sorry to interrupt you, but you really
24 have to keep it focused on the applicant here.

25 MR. CLAWSON: I am keeping it focused on the applicant.

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1 MR. WIGGINS: It's good to have the general lesson, but
2 we don't have a lot of time left.

3 MR. CLAWSON: Well, sir, I'd suggest we take some time.

4 MR. WIGGINS: Why don't you take three more minutes.

5 MR. CLAWSON: Sir, I'll take whatever time is necessary
6 to address the committee.

7 MR. WIGGINS: No, no, you won't.

8 MR. CLAWSON: A few moments ago you made a comment -- I
9 don't know your name, sir.

10 MR. WIGGINS: Frank Wiggins.

11 MR. CLAWSON: Frank, a few moments ago you made a comment
12 that what this gentleman, what counsel for the applicant was saying,
13 was a bunch of legal gobbledygook. It was not. Let me make it very
14 clear to you, sir, as somebody who sat in the same kind of position
15 you currently occupy, that you are acting pursuant to Congressional
16 authority. You are acting pursuant to Congressional power to grant
17 or deny a governmental benefit on an individual citizen of the United
18 States, and you are holding this hearing in the Capitol of the United
19 States. So, sir, with all due respect, do your duty to the
20 Constitution.

21 MR. WIGGINS: Thank you.

22 MR. CLAWSON: Sir, let me explain here if I might
23 regarding the nonprofit status issue and I think we can get this
24 resolved very quickly. It is very common for news organizations to
25 begin life in that form and then migrate into a for-profit form later

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1 as there is financial base to allow the transition.

2 Because of federal laws involving securities and
3 involving tax, a divestiture has to be made at a certain point when
4 the revenues of the enterprise reach a certain point. That is
5 clearly what has occurred here. It all has to be done on an arm's
6 length basis.

7 There has been an enormous discussion here about content.
8 This morning -- this is a copy of the Winchester Star. I live out in
9 the Shenandoah Valley. That's a daily newspaper. It's been
10 published for 100 years. It happens to be published by a former
11 Democratic U.S. Senator. If you look through that newspaper, you
12 will find that in that entire paper today there are only seven local
13 stories.

14 Does that disqualify them from being accredited by the
15 Press Gallery, that limited number of local stories? There's a
16 problem here with content regulation, content restrictions being
17 considered by this committee. I might note that your organization,
18 Mr. Chairman, Bloomberg, was originally denied accreditation by this
19 body over a decade ago because of the committee's very obtuse rules
20 as to what a news organization was. Bloomberg had to fight very

strongly to get accreditation before this Gallery, and I find it ironic that you as a Bloomberg representative are sitting here today trying to determine whether or not this is a legitimate news organization that should be accredited.

The issue was raised about books and tapes that are sold

on that web site. That is a common practice on newspaper web sites all across the United States today. Again, media organizations are moving increasingly to a transactions-based business model, not just subscriber and not just advertiser revenue.

The issue again on nonprofits, the issue was brought up about Religious News Service, for instance, which was accredited here.

MR. KEENAN: They're not nonprofit. They're owned by Scripps-Howard. They went for-profit several years ago.

MR. CLAWSON: In the beginning they were nonprofit. In the beginning they were accredited by the Press Gallery. I know that for a fact because the very original Washington bureau chief for Religious News Service is my wife.

MR. ROBERTS: Mr. Clawson, let's conclude it, please.

MR. CLAWSON: Well, sir, I'm going to wrap it up quickly.

The inquiry into news-gathering practices here that has taken place is just absolutely offensive. I have been in this town since 1975. I've taken part in meetings and hearings just like the ones that we're having here today, and I've got to tell you, throughout all my time in this town I have never seen anything more offensive to the First Amendment in my life than what you people are doing here today.

It is unbelievable to me that a body acting pursuant to government power would begin trying to pry into the news-gathering practices of any media organization. That is just absurd. If it

occurred to Bloomberg, if it occurred to the Columbus Dispatch, your publishers, your owners, would be screaming to the Supreme Court.

There is also a problem with the secrecy of these proceedings. When I was on the board in the Periodical Press Gallery, we took steps to make sure that all of our meeting records on applications were public. Anyone could come in and take a look at them. Clearly there's a problem here with secrecy in the Gallery and you need to change that practice.

Finally, let me sum up here. Your job --

MR. ROBERTS: Mr. Clawson, there's no problem with secrecy, as I think this hearing evidences.

MR. CLAWSON: Well, there's clearly a problem if somebody is trying for a year and a half for information and can't get it.

MR. ROBERTS: Mr. Ackerman, is this gentleman representing or speaking on your behalf?

MR. SPERRY: No, but I'd like to know his name? What's your name?

MR. CLAWSON: My name is Patrick Clawson.

MR. ROBERTS: This is Mr. Clawson, who was quoted in one of the first articles that ran about this.

MR. CLAWSON: Let me make it clear, sir, that I have no connection business or financially at all with WorldNetDaily, none, zero.

Let me sum up, sir, just by stating --

MR. ROBERTS: Hang on, Mr. Clawson. I want to find out

whether the applicant is enjoying this, because I'm not.

MS. FARAH: I don't think that's relevant, whether the applicant is enjoying it or not.

4 MR. ROBERTS: Do you think this is serving your interest?

5 MR. ACKERMAN: Yes, because I think he's made some good

6 comments.

7 MR. SPERRY: I think he's started to make some good

8 comments.

9 MR. ACKERMAN: And it's instructive for the record
10 because in the event that you guys affirm the denial I certainly
11 think that the district court would be pleased to hear about somebody
12 who sat on an identical board doing exactly the same thing, giving
13 some sense of a standard.

14 MR. WIGGINS: Okay, then let him finish and move on.

15 MR. ROBERTS: Let's complete it, then.

16 MR. CLAWSON: On nonprofits, by the way, I think you'll
17 recall that many years ago the Center for Investigative Reporting --

18 MR. ROBERTS: Do you have any idea about how much time
19 you're going to need?

20 MR. CLAWSON: About a moment and a half, a minute and a
21 half.

22 MR. ROBERTS: Then let's do it.

23 MR. CLAWSON: Is that correct, Center for Investigative
24 Reporting was accredited here back in the 1980's, I believe?

25 MR. KEENAN: Yes. They worked for daily newspapers.

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1 MR. CLAWSON: So do they, the Western Journalism Center.
2 The practice that was brought up here about them buying
3 space for the Christopher Ruddy story in other newspapers -- as a
4 broadcaster, my broadcasting organizations have done that in the past
5 for my investigative series on television. They bought space in
6 local newspapers to promote the content of those series. That's not
7 an unheard-of media practice at all.

8 The issue of the expired pass. I will tell you that when
9 I was on the board over in the Periodical Press Gallery that there
10 had been a number of times when we told reporters to go ahead and
11 continue using their passes until new ones were granted. It has been
12 a longstanding practice up here on Capitol Hill, as long as I can
13 remember, and I've done it myself. So I don't think that there's any
14 serious problem here.

15 The biggest problem that I'm concerned about is this.
16 This committee is engaging in what I believe to be a very unlawful
17 inquiry into news-gathering practices. It is offensive on its face.
18 It is a violation of First Amendment rights that this applicant has.

19 You, sir, are acting pursuant to Congressional power. I
20 cannot emphasize that enough to you. I have spent a long time
21 studying the background of these committees so that I understood as a
22 board member what my authority came from, what the limits of my
23 authority was. This body was set up over a century ago by Congress
24 to promulgate Congressional power on the press.

25 MR. ROBERTS: You said you were concluding. I think

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1 you've reached the limit of the patience of the committee.

2 MR. CLAWSON: Sir, you are urinating on the Constitution
3 in this hearing.

4 MR. ROBERTS: That's a good closing line.

5 MR. CLAWSON: Unfortunately, that is the truth.

6 MR. ROBERTS: Thank you.

7 MR. CLAWSON: Sir, it is not gobbledygook. It is your
8 solemn duty to the Constitution of the United States, and
9 unfortunately you don't take it seriously.

10 MR. ROBERTS: Thank you, Mr. Clawson.

11 MR. WIGGINS: You said you wanted a minute or so at the

12 end. I think we're there.

13 MR. ROBERTS: Yes. Let me just ask if anybody on the
14 committee has any more questions that they need to ask of the
15 applicant to straighten out the facts applying to the two reasons why
16 the application was denied, substantial original reporting content
17 and the cross-ownership with Western Journalism Center.

18 [No response.]

19 MR. ROBERTS: The table is yours again.

20 MR. ACKERMAN: One of the things that you said that was
21 real important was that you had reviewed evidence, that you had gone
22 to the WorldNet site and made a determination based on what you saw
23 at the site. Now, what's important to the proceedings here, and I
24 would hope that Mr. Wiggins would agree to me that there is a right
25 or a privilege at stake here, and we can argue all day about whether

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1 it's a right or whether it's a privilege. But in either event, even
2 if it's only a privilege, what I'm entitled to is the evidence on
3 which you relied, because the test for me when we have to take this
4 to court is whether or not you had substantial evidence upon which
5 you could make your decision. If you don't give me that evidence, I
6 can't even do my job as a lawyer.

7 MR. ROBERTS: I believe we did -- did we not, Frank? --
8 mention in the letter that we'd looked at the site. There were five
9 people. We all looked at it on line. I don't think anybody was
10 making printouts in those days. If they were, it was occasional.
11 And they're all listed on the thing that we gave you.

12 MR. SPERRY: Did you look at a feature called "WND
13 Scoops" at all? Did anybody go to that, in the left-hand column,
14 "WND Scoops"?

15 MR. ROBERTS: Never saw it, no.

16 MR. SPERRY: Just for the record, no one looked that up?

17 MR. KEENAN: I've seen it.

18 MR. SPERRY: Joe Keenan has seen it.

19 MR. ACKERMAN: What I'd like to do is, we'll just call it
20 Applicant's Exhibit 1, which is a letter from Mr. Wiggins listing the
21 things that were relied upon by the committee in making its decision.
22 When I referred earlier to the fact that at least 16 of the items
23 focused on conservatism, the right-wing conspiracies and all these
24 other things, this is the document that I was referring to.

25 Frank, if you don't have any problem, I'll just mark it
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1 for the record.

2 MR. ROBERTS: We'll put that in the hearing record.

3
4 Applicant's Exhibit No. 1 marked

5 for identification.]

6 MR. ACKERMAN: Thank you.

7 MR. ROBERTS: Also, just to clarify for the record, you
8 had objected that we did not provide you with the other things that
9 you asked for. When we received your request for information, I went
10 to Joe and said, let's take the whole file that you have that we
11 looked at and let's provide it to them. We provided you a list,
12 because as I'm told that's the appropriate way to communicate
13 legally.

14 If there's more information from that list that you need,
15 that's fine. But that's essentially it.

16 MR. ACKERMAN: But I'm entitled to it before the hearing.
17 Just for the record, that was a letter that was sent to you on or
18 about February 28th, 2002, where I said, "Because of due process
19 concerns it's kindly requested that you respond to these requests in
20 a manner that's consistent with our right to review any materials

provided and-or to object to any potential failure to produce such records prior to the hearing of this matter," because it only matters prior to the hearing. It's not enough to say, well, now we're going to consider your right, and then, hey, if you want some evidence after we've denied your right, well then, we'll give it to you. It

doesn't work that way.

And I asked for correspondence, and Mr. Keenan and Mr. Sperry just had a long dialogue about email correspondence. Under our laws those emails are considered documents. They're considered to be writings under the law, and Mr. Keenan doesn't seem to know where they all are.

MR. KEENAN: They automatically flush out of our system after 30 days..

MR. ACKERMAN: Then we've got an even bigger disturbance. Our emails disappear, our evidence disappears. I don't even want to get into it, and Frank and I will work it out later.

MR. ROBERTS: But the concern that you had about information prior to the hearing, in the telephone conversations that you had with Mr. Wiggins prior to this hearing, did you raise that concern?

MR. ACKERMAN: He responded by saying Freedom of Information Act does not apply to the Gallery, and that was his position, that was his affirmative position. What am I going to do? I can't put a gun to his head. I've got a hearing to show up to, and I did my best, given what you have provided, which is a list of a bunch of articles that claim that my guys are somehow connected to Larry Klayman and Judicial Watch and the new right-wing conspiracy, which hasn't a thing to do with what I asked for.

I asked for correspondence relating to this particular application.

MR. WIGGINS: Do you want to do a real brief summing up or are you through now?

MR. FARAH: He's just been asked questions and he's been responding.

MR. WIGGINS: I know. I told my guy not to talk any more.

MR. ACKERMAN: I'm just responding.

MR. WIGGINS: I told my guy not to talk any more. Do you want to take a minute, a minute and a half, to sum up?

MR. CLAWSON: Mr. Wiggins, you are exceptionally rude.

MR. TORRY: You're out of order.

MR. WIGGINS: Don't worry about it.

We really have to move. My guys have got some limitations. We've got to make a decision.

MR. ACKERMAN: And I want you to make it based on evidence that's equally available to the parties and the evidence upon which you're going is not equally available.

MR. WIGGINS: Your objection has been heard. If you want to sum up, that would be good.

MR. ACKERMAN: Thanks, Frank.

MR. WIGGINS: Sure.

MR. ACKERMAN: You needed substantial evidence to support your decision. You didn't give me the evidence that you relied on, other than the list, and now we hear that there were all of these emails. We hear that there was other correspondence. I even asked for the actual application with the notes on it and wasn't given it.

One thing I know for sure is that my clients are entitled

2 to equal application of the laws. You can't say that WorldNet is to
3 be treated any differently than the Christian Science Monitor when it
4 comes to applying the standards. If you look at nonprofits and
5 interpret nonprofit for one member, you must equally apply that same
6 interpretation to my client. You can't say, well, gee, the Christian
7 Science Monitor, well, they might have a connection, but that
8 connection's okay.

9 Do you have deference as a committee? Have you been
10 authorized to exercise your deference over these proceedings?
11 Absolutely. I am not questioning that. But what you don't have a
12 basis to do is to discriminate between applicants based on some
13 loose, moving target standard that says: Oh gee, if you're a
14 Christian Science Monitor we'll do it by one standard, if you're
15 Bovard we'll apply a different standard, and if you're Medill we're
16 going to apply a different standard. That you can't do. That's
17 probably my biggest problem with what you're doing.

18 Secondly, you're not allowed to again rely on
19 associational relationships to deny a First Amendment privilege. You
20 can't say, well, gee, it's because you're connected to so-and-so
21 we're going to deny it.

22 Now, I understand that you have a legitimate right to
23 look at the independence of the news reporting entity and I don't
24 question that. I can't question that. The law says that you have
25 the right to do that. But when you've got the legal reality and you

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1 can judicially notice the fact that these guys are separately
2 incorporated, that they're incorporated in a different state, that
3 they've got fiduciary duties, then all of a sudden it takes on a
4 different -- they are legally independent.

5 Now you guys are getting into, well, does that
6 independence having anything to do with how they report the news?
7 Well, that's the concern here, is you're not allowed to inquire into
8 or to try to control how news reporting is done. Congress doesn't
9 have that right and by imputation you don't, either. You can't.
10 That's a violation of the Constitution because you're interfering
11 with access to news. You're applying laws unequally. If you allowed
12 somebody else in on a completely different interpretation, my
13 client's entitled to that interpretation just as much as anybody
14 else.

15 Now, getting into this idea of original content, it's a
16 subjective determination the way you've framed it. I would suggest
17 and I'm respectfully suggesting that there's been an abuse of
18 discretion here, because if the only thing I have to rely on in terms
19 of what you've determined to be original content is what's been
20 previously marked as Applicant's Exhibit 1, the content that you are
21 looking at was very focused. You had a target in mind.

22 I can only make inferences based on what little you did
23 give me, and I think a reasonable person looking at the list of
24 materials that you gave me would suggest that you had something in
25 mind that was irritating you. Now again, we don't know who actually

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1 investigated. I asked for all the notes, correspondence, and
2 internal memoranda and I was told I couldn't have it.

3 I suggest that what would have happened is I would have
4 seen that Mr. Keenan was probably the person responsible for heading
5 up the application process and reporting information, because there
6 was a disparity that we saw here before where you said that you may
7 have saw something and then he said, no, I saw it. Well, obviously
8 there wasn't a discussion about what each other saw. That's a
9 problem under the Constitution. Not providing evidence is a problem
10 under the Constitution.

11 This one gentleman who sits on the committee keeps
12 nodding his head no and sighing and everything else. For whatever
13 reason, there's a failure in understanding that there's a fundamental
14 constitutional right here, and I'm going to go to sleep again -- and
15 I'm not trying to personalize this, but I'm going to go to sleep
16 comfortable tonight knowing that I upheld my oath to the
17 Constitution, and I would submit that you would not be upholding your
18 duties to the Constitution if you use somebody's association with
19 another entity as a basis for denying an application.

20 You are not living up to your constitutional obligation
21 if you say you must report five original stories per day. That is
22 not living up to your constitutional obligation. You don't have a
23 right to control how news access and news-gathering is done.

24 I'm just very kindly asking you -- and again, I do
25 appreciate all the time that you have given, including the time that

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1 you gave this gentleman. I understand that it got a little rough.
2 But the bottom line is I think that in your allowing this hearing you
3 are doing your constitutional duty. Now all I need you to do is take
4 it into the decisional process, apply constitutional standards based
5 on what the law is.

6 Western Journalism and WorldNet are legally separate
7 entities. There is no evidence before you that's been provided in
8 Applicant's Exhibit 1 or through the testimony today to suggest
9 otherwise. Joe told you: Look, I do my own reporting. Either you
10 believe him or you don't. The issue is do you have evidence to the
11 contrary and, if so, have you provided it. If you haven't provided
12 it you can't say, well, Mr. Ackerman, we have evidence to show that
13 WorldNet is not independent. Well, where is it? Give it to me.

14 If Applicant's Exhibit 1 is the only proof that you have,
15 I would submit that you're not in compliance with the Constitution.
16 I mean that with all due respect.

17 I think that in many ways this is novel to all of us.
18 The last time you guys were challenged on something was 20-plus years
19 ago and the law isn't clear in this area. There's only a couple of
20 cases out there and I think to some extent we're all dealing with
21 novel issues. Give the benefit to the First Amendment. That's all
22 I'm asking you to do.

23 Thanks.

24 MR. ROBERTS: Thank you.

25 MR. ACKERMAN: And God bless each of you.

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1 MR. ROBERTS: Let me close the hearing. I really
2 appreciate the closing argument. It's very well done. I want to
3 thank you, Mr. Farah.

4 MR. FARAH: Thank you, Bill. This was a lot more
5 pleasant than our phone conversation.

6 MR. ROBERTS: I hope that your future in Washington will
7 be less difficult and that future appearances on the Hill and
8 elsewhere will be more fun.

9 MR. FARAH: Thank you.

10 MR. ROBERTS: Thanks for coming.

11 [Whereupon, at 11:56 a.m., the hearing was adjourned.]
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